

**Memorandum 97-38****Trial Court Unification: Code of Civil Procedure Draft**

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Modifying the Code of Civil Procedure to implement SCA 4 will require extensive revisions. Attached is a staff draft that builds on the draft we received from Professor Kelso.

Many of the revisions in the attached draft are routine technical amendments, which are included in this initial staff draft to provide an opportunity for review by the Commission. In future memoranda, the staff intends to omit the technical amendments, so that the Commission and interested persons can focus on the key material. A list of the technical amendments will be included, along with an explanation that the technical amendments are available on request.

Staff notes in the attached draft present explanatory material or draw attention to issues. At the Commission's upcoming meeting, the staff intends to present only the issues raised in the boxed staff notes and the issues discussed in this memorandum. If other issues warrant the Commission's attention, please plan on raising them at the meeting.

The following important issues call for more discussion than is appropriate in a staff note:

**COMPOSITION OF THE APPELLATE DIVISION**

How much discretion should the Chief Justice have in selecting judges to serve on the appellate division? As discussed at the Commission's meeting on May 1, 1997, SCA 4 would amend Article VI, Section 4 of the California Constitution to read in part:

In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.

That language stems from the Law Revision Commission's Report on SCA 3, the more ambitious but unsuccessful predecessor of SCA 4. *Trial Court*

*Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1, 77 (1994). The Commission's Comment explained that the provision

requires adoption of court rules intended to foster independence of judges serving in the appellate division. Rules may set forth relevant factors to be used in making appointments to the appellate division, such as length of service as a judge, reputation within the unified court, and degree of separateness of the appellate division workload from the judge's regular assignments (e.g., a superior court judge who routinely handles large numbers of misdemeanors might ordinarily not serve in the appellate division). Review by a panel of judges might include judges assigned from another county in appropriate circumstances, or even by a panel of appellate division judges from different superior courts who sit in turn in each of the superior courts in the "circuit."

*Id.*

In light of that constitutional language, as well as the underlying problem that judges serving in the appellate division of a unified superior court will review decisions rendered by their colleagues, the Commission made a preliminary decision to revise Code of Civil Procedure Section 77 to give the Chief Justice broad discretion in appointing judges to the appellate division. (See 5/1/97-5/2/97 Minutes at p. 12.) Subdivisions (a) and (b) of proposed Section 77 are the staff's attempt to implement that decision:

77. (a) In every county and city and county, there is an appellate department division of the superior court consisting of three judges or, when the Chairperson of the Judicial Council Chief Justice finds it necessary, four judges.

(1) In a county with three or fewer judges of the superior court, the appellate department shall consist of those judges, one of whom shall be designated as presiding judge by the Chairperson of the Judicial Council, and an additional judge or judges as designated by the Chairperson of the Judicial Council. Each additional judge shall be a judge of the superior court of another county or a judge retired from the superior court or court of higher jurisdiction in this state.

(2) In a county with four or more judges of the superior court, the appellate department shall consist of judges of that court designated by the Chairperson of the Judicial Council, who shall also designate one of the judges as the presiding judge of the department. judges. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to

promote the independence and quality of each appellate division. The rules adopted by the Judicial Council may identify factors that are relevant in making assignments to the appellate division, including but not limited to, a judge's length of service, a judge's reputation within the county, the types of matters that have been or will be assigned to a judge, and the recommendations of the presiding judge. Each judge assigned to the appellate division of a superior court shall be a judge of that court, a judge of the superior court of another county, or a judge retired from the superior court or a court of higher jurisdiction in this state. The Chief Justice shall designate one of the judges of each appellate division as the presiding judge of the division.

....

**Comment.** Section 77 is amended to reflect the elimination of the justice court, and the authority of the municipal and superior courts in each county to unify their operations in the superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

As amended, subdivision (a) directs the Chief Justice to assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence and quality of each appellate division. This is consistent with Article VI, Section 4 of the California Constitution, which expressly recognizes the goal of promoting the independence of the appellate division.

....

As proposed, the provision would recite some factors that the Judicial Council could include in rules governing assignments to the appellate division. The Commission should consider whether such a list is helpful, and, if so, whether the list should be modified in any way.

In particular, the Commission should resolve whether to express a preference for or against judges who are locally accountable, as opposed to judges lacking ties to the county in which the appellate division sits. Approaches to this issue could range from expressly recognizing local accountability as a goal in selecting appointees (complementing the goals of promoting the independence and quality of the appellate division) to requiring appointment of nonlocal judges, at least in counties with only a few judges.

Proposed Section 77 is a middleground: It neither favors a local judge nor makes a local judge ineligible for appointment. This reflects the competing considerations involved. On the one hand, California has embraced the principle that a judge should be accountable to the people served by the court to which the judge is assigned. See, e.g., Cal. Const. Art. VI, § 16 ("judges of courts of appeal

shall be elected in their districts”). On the other hand, a judge with local ties may be unfairly biased in favor of local litigants, and unduly influenced by local public opinion and pressure from other judges on the court. Does proposed Section 77 strike an appropriate balance between these concerns, or would some other approach be better?

#### TERMS OF APPOINTMENTS TO THE APPELLATE DIVISION

Under SCA 4, the Chief Justice is to assign judges to the appellate division “for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.” Cal. Const. art. VI, § 4 (as revised by SCA 4) (emphasis added.) In implementing SCA 4, the Commission should consider whether to impose any restriction on the length of appointments to the appellate division. The answer may be different for counties in which the municipal and superior courts unify their operations than for other counties.

One approach would be to statutorily specify a minimum term applicable in all counties, and allow the Judicial Council to promulgate rules consistent with that restriction. For example, Code of Civil Procedure Section 77(c) could be amended to read in part: “In addition to their other duties, the judges designated as members of the appellate ~~department~~ division of the superior court shall serve for the period specified in the order of designation , not less than one year.” By providing assurance against removal from office, such a statutory minimum term may help promote the independence of judges on the appellate division of a unified court. The logic of statutorily specifying a minimum term for appointments to the appellate division of a non-unified superior court is less clear, because no statutory minimum exists at present.

In considering the merits of the foregoing approach and other alternatives, it would be helpful to have input from the Judicial Council, which has expertise regarding how appellate divisions currently operate. As currently drafted, proposed Section 77 does not impose any restriction on the length of appellate division appointments in any superior court.

**Preserving the Differentiation Between Municipal  
AND SUPERIOR COURT TYPES OF CASES**

At its meeting on May 1, 1997, the Commission considered how to preserve the current differentiation between municipal and superior court causes when the trial courts in a county unify. This is important in a number of contexts, such as determining whether a case is covered by economic litigation procedures (proposed Section 91), or deciding whether an appeal is subject to the jurisdiction of the appellate division (proposed Section 904.5). See also proposed §§ 88 (original jurisdiction of municipal court), 396a (statement of jurisdictional facts), 425.10 (statement of facts), 430.10 (objection to complaint or cross-complaint), 489.220 (amount of undertaking), 580 (relief awardable in civil causes), 585.5 (judgment for payment of money in beta matter), 685.030 (satisfaction of money judgment), 720.160 (undertaking by creditor), 720.260 (same), 904.1 (taking appeal in alpha matter), 904.2 (taking appeal in beta matter), 1033 (small recovery), 1134 (judgment and costs), 1161.2 (case court records), 1710.20 (filing of application).

The Commission concluded that it should create two categories of causes: One comprised of causes like those now brought in superior court; the other consisting of causes like those now brought in municipal court. Instead of attempting to draft an exhaustive list of causes in each category, the Commission decided to amend each provision setting forth a cause, so as to state which category includes the cause. (See 5/1/97-5/2/97 Minutes at pp. 11-12.) The Commission did not decide how to label the categories.

For purposes of this draft, the staff has used the terms “alpha cause” (for causes like those now brought in superior court) and “beta cause” (for causes like those now brought in municipal court). To account for matters involving multiple causes, the draft also introduces the terms “alpha matter” (see Section 83) and “beta matter” (see Section 85). The staff encourages the Commission and other interested persons to carefully review these definitions and the provisions using the defined terms. To facilitate such review, those sections of the draft are bulleted (•).

The terms “alpha cause,” “alpha matter,” “beta cause,” and “beta matter” are short, easy to pronounce and remember, and, we hope, devoid of negative

connotations. Although the terms have advantages, there are many other possibilities. Substituting alternative terminology would be a simple matter.

Options considered thus far include:

(1) “Major civil action” (for current superior court causes) and “minor civil action” (for current municipal court causes). To some extent, the term “minor civil action” implies that such actions are unimportant. The terms “major civil action” and “minor civil action” may also be overly narrow, because the Code of Civil Procedure differentiates between actions and special proceedings. See §§ 22, 23, 363, and Part 3 (commencing with § 1063). In contrast, the term “cause” is broad enough to apply regardless of subject matter. See 3 B. Witkin, *California Procedure, Pleadings* § 23, at 66-67 (3d ed. 1985)

(2) “General civil cause” (for current superior court causes) and “limited civil cause” (for current municipal court causes). This terminology would reflect that causes like those now in municipal court are subject to procedural limitations, such as use of economic litigation procedures, review by the appellate division (not the court of appeal), and amount in controversy constraints. The terms are somewhat cumbersome. Some persons might consider the term “limited civil cause” pejorative.

(3) “Large cause” (for current superior court causes), “medium cause” (for current municipal court causes), and “small cause” (for small claims cases). These terms are simple but not necessarily accurate: Some causes are subject to superior court jurisdiction even though the amount at stake is small.

(4) “Category 1 Cause” or “Category A Cause” (for current superior court causes) and “Category 2 Cause” or “Category B Cause” (for current municipal court causes). These terms are cumbersome and lend themselves to typographical errors with substantive consequences (e.g., mistakenly typing a “1” instead of a “2” could create serious confusion). To some extent, the terms “Category 2 Cause” and “Category B Cause” might be considered pejorative, in that they denote a cause of secondary, as opposed to primary, importance. The term “beta cause” might be construed similarly, although the staff considers that less likely. In any case, there is an important distinction between indicating that a cause is in the second tier and implying that a cause is of little importance.

(5) “General cause” (for current superior court causes) and “economic litigation cause” (for current municipal court causes). Professor Kelso has been investigating the viability of this option. A potential, but probably not insurmountable, complication is that under Code of Civil Procedure Section 91(c)

any action may be withdrawn from economic litigation procedures “upon a showing that it is impractical to prosecute or defend the action within the limitations of these provisions.” The terminology may also become problematic if, as Commissioner Wied has suggested, economic litigation procedures are applied more broadly in the future than they are at present.

(6) Using geographical terms, such as “Whitney cause” and “Shasta cause.” Such an approach could lead to extensive debate about which landmarks to choose. A lesser detriment is that the approach does not lend itself to uniformity: If another state follows the approach (which might never occur), that state probably would use its own local landmarks rather than California ones.

(7) “Supericause” (for current superior court causes) and “municause” (for current municipal court causes). This terminology would reflect the historical jurisdictional distinction between causes. It could easily be distorted into “supercause” and “puny cause.”

In contrast, the terms “alpha cause” and “beta cause” are less meaningful but not as readily contorted. Ideally, someone will suggest a set of terms that is superior to any of the alternatives considered to date. The staff encourages creative thinking along those lines.

Respectfully submitted,

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## Proposed Legislation

1 **Heading of Chapter 4 (commencing with Section 71) (amended)**

2 SEC. \_\_. The heading of Chapter 4 (commencing with Section 71) of Title 1 of  
3 Part 1 of the Code of Civil Procedure is amended to read:

4 Chapter 4. Municipal Courts and superior courts

5 **Comment.** The heading “Chapter 4. Superior Courts” is amended to consolidate provisions  
6 relating to the municipal and superior courts. The amendment reflects the elimination of the  
7 justice court, and the authority of the municipal and superior courts in each county to unify their  
8 operations in the superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

9 **Article 1 Heading (immediately preceding Section 71) (added)**

10 SEC. \_\_. An article heading is added immediately preceding Section 71 of the  
11 Code of Civil Procedure, to read:

12 Article 1. Miscellaneous Provisions

13 **Comment.** The heading “Article 1. Miscellaneous Provisions” is added to reflect the  
14 elimination of the justice court, and the authority of the municipal and superior courts in each  
15 county to unify their operations in the superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

16 Chapter 4 (Municipal Courts and Superior Courts) of Title 1 of Part 1 is now divided into three  
17 articles: “Article 1. Miscellaneous Provisions,” “Article 2. Original Jurisdiction” (commencing  
18 with Section 81), and “Article 3. Economic Litigation Procedures” (commencing with Section  
19 90).

20 ☞ **Staff Note.** Currently, Chapters 4 and 5 of Title 1 of Part 1 of the Code of Civil Procedure are  
21 organized as follows:

22 Chapter 4 (commencing with Section 71). Superior Courts

23 Chapter 5 (commencing with Section 81). Municipal Courts and Justice Courts

24 Article 1 (commencing with Section 81). General Provisions

25 Article 2 (commencing with Section 90). Economic Litigation for Municipal and Justice  
26 Courts

27 With the elimination of the justice courts and the option of unification, this organizational scheme  
28 needs revision. The staff recommends reorganizing the statutes as described in the proposed  
29 Comment.

30 **Code Civ. Proc. § 71 (amended). Process**

31 SEC. \_\_. Section 71 of the Code of Civil Procedure is amended to read:

32 71. The process of municipal courts and superior courts shall extend throughout  
33 the state.

34 **Comment.** Section 71 is amended to consolidate provisions relating to the municipal and  
35 superior courts. The amendment reflects the elimination of the justice court, and the authority of  
36 the municipal and superior courts in each county to unify their operations in the superior court.  
37 Cal. Const. art. VI, §§ 5(b), (e), 10. As to municipal courts, Section 71 continues former Section  
38 84 without substantive change.

1 **Code Civ. Proc. § 77 (amended). Appellate division**

2 SEC. \_\_. Section 77 of the Code of Civil Procedure is amended to read:

3 77. (a) In every county ~~and city and county~~, there is an appellate department  
4 division of the superior court consisting of three judges or, when the Chairperson  
5 of the Judicial Council Chief Justice finds it necessary, four judges.

6 (1) ~~In a county with three or fewer judges of the superior court, the appellate~~  
7 ~~department shall consist of those judges, one of whom shall be designated as~~  
8 ~~presiding judge by the Chairperson of the Judicial Council, and an additional judge~~  
9 ~~or judges as designated by the Chairperson of the Judicial Council. Each additional~~  
10 ~~judge shall be a judge of the superior court of another county or a judge retired~~  
11 ~~from the superior court or court of higher jurisdiction in this state.~~

12 (2) ~~In a county with four or more judges of the superior court, the appellate~~  
13 ~~department shall consist of judges of that court designated by the Chairperson of~~  
14 ~~the Judicial Council, who shall also designate one of the judges as the presiding~~  
15 ~~judge of the department. judges. The Chief Justice shall assign judges to the~~  
16 ~~appellate division for specified terms pursuant to rules, not inconsistent with~~  
17 ~~statute, adopted by the Judicial Council to promote the independence and quality~~  
18 ~~of each appellate division. The rules adopted by the Judicial Council may identify~~  
19 ~~factors that are relevant in making assignments to the appellate division, including~~  
20 ~~but not limited to, a judge's length of service, a judge's reputation within the~~  
21 ~~county, the types of matters that have been or will be assigned to a judge, and the~~  
22 ~~recommendations of the presiding judge. Each judge assigned to the appellate~~  
23 ~~division of a superior court shall be a judge of that court, a judge of the superior~~  
24 ~~court of another county, or a judge retired from the superior court or a court of~~  
25 ~~higher jurisdiction in this state. The Chief Justice shall designate one of the judges~~  
26 ~~of each appellate division as the presiding judge of the division.~~

27 (b) ~~In an appellate department with four judges, In each appellate division, no~~  
28 ~~more than three judges shall participate in a hearing or decision. The presiding~~  
29 ~~judge of the department division shall designate the three judges who shall~~  
30 ~~participate.~~

31 (c) In addition to their other duties, the judges designated as members of the  
32 appellate department division of the superior court shall serve for the period  
33 specified in the order of designation. Whenever a judge is designated to serve in  
34 the appellate department division of the superior court of a county other than the  
35 county in which ~~such~~ the judge was elected or appointed as a superior court judge,  
36 or if ~~he~~ the judge is retired, in a county other than the county in which ~~he~~ he resides,  
37 ~~he~~ the judge resides, the judge shall receive from the county to which ~~he~~ he  
38 ~~is~~ is designated ~~his~~ the judge is designated the judge's expenses for travel, board, and  
39 lodging. If the judge is out of ~~his~~ the judge's county overnight or longer, by reason  
40 of the designation, ~~such~~ the judge shall be paid a per diem allowance in lieu of  
41 expenses for board and lodging in the same amounts as are payable for ~~such~~ those  
42 purposes to justices of the Supreme Court under the rules of the State Board of  
43 Control. In addition, a retired judge shall receive from the state and the county to

1 which he the judge is designated, for the time so served, amounts equal to that  
2 which he the judge would have received from each if he the judge had been  
3 assigned to the superior court of the county.

4 (d) The concurrence of two judges of the appellate ~~department~~ division of the  
5 superior court shall be necessary to render the decision in every case in, and to  
6 transact any other business except ~~such that business that~~ business that may be done at chambers  
7 by the presiding judge of, ~~such department~~ the division. The presiding judge shall  
8 convene ~~such department at such times as may be~~ the division as necessary. He  
9 The presiding judge shall also supervise its business and transact ~~such thereof as~~  
10 its business that may be done at chambers.

11 (e) ~~Every appellate department under this section shall have jurisdiction on~~  
12 ~~appeal from the municipal and justice courts within the county or city and county~~  
13 ~~in all cases in which an appeal may be taken to the superior court as is now or may~~  
14 ~~hereafter be provided by law, except such appeals as require a retrial in the~~  
15 ~~superior court. The powers of each appellate department shall be the same as are~~  
16 ~~now or may hereafter be provided by law or rule of the Judicial Council relating to~~  
17 ~~appeals to the superior courts. The appellate division of the superior court has~~  
18 jurisdiction on appeal from the following courts, in all cases in which an appeal  
19 may be taken to the superior court or the appellate division of the superior court as  
20 is now or may hereafter be provided by law, except appeals that require a retrial in  
21 the superior court:

22 (1) The unified superior court.

23 (2) The municipal courts within the county.

24 (f) The powers of the appellate ~~department~~ division shall be the same as are now  
25 or may hereafter later be provided by law or rule of the Judicial Council relating to  
26 appeals to the appellate division of the superior courts.

27 (g) The Judicial Council may promulgate rules, not inconsistent with law,  
28 governing to promote the independence of, and govern the practice and procedure  
29 and the disposition of the business of ~~such appellate departments, or of each class~~  
30 ~~thereof,~~ the appellate division.

31 (h) A reference in any other statute to the appellate department of the superior  
32 court means the appellate division of the superior court.

33 **Comment.** Section 77 is amended to reflect the elimination of the justice court, and the  
34 authority of the municipal and superior courts in each county to unify their operations in the  
35 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

36 As amended, subdivision (a) directs the Chief Justice to assign judges to the appellate division  
37 for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council  
38 to promote the independence and quality of each appellate division. This is consistent with Article  
39 VI, Section 4 of the California Constitution, which expressly recognizes the goal of promoting the  
40 independence of the appellate division.

41 As amended, subdivision (b) continues the rule that the appellate division sits in panels of three.  
42 A judge may not participate in appellate review of any proceeding that the judge tried or heard.  
43 Section 170.1(7)(b).

44 Subdivision (e) is amended to delete the reference to the justice courts, and specify the  
45 jurisdiction of the appellate division in a unified superior court. For guidance on which civil

1 causes are subject to the appellate jurisdiction of the appellate division, see Sections 85 (beta  
2 matters) & 904.5 (appellate jurisdiction) & Comments and Article VI, Section 11 of the  
3 California Constitution.

4 Section 77 is amended throughout to replace references to the appellate department with  
5 references to the appellate division, and to replace references to the Chairperson of the Judicial  
6 Council with references to the Chief Justice. This is consistent with the terminology used in  
7 Article VI, Sections 4, 10, and 11 of the California Constitution.

8 Section 77 is also amended to make technical changes. For example, subdivision (a) is  
9 amended to delete the reference to “city and county.” This reference is unnecessary because the  
10 definition of “county” in Section 17 includes “city and county.”

11  **Staff Note.** This section presents a number of important issues, which are discussed in  
12 Memorandum 97-38.

### 13 **Heading of Chapter 5 (commencing with Section 81) (repealed)**

14 SEC \_\_. The heading of Chapter 5 (commencing with Section 81) of Title 1 of  
15 Part 1 of the Code of Civil Procedure is repealed.

### 16 ~~Chapter 5. Municipal Courts and Justice Courts~~

17 **Comment.** The heading “Chapter 5. Municipal Courts and Justice Courts” is repealed to reflect  
18 the elimination of the justice court, and the authority of the municipal and superior courts in each  
19 county to unify their operations in the superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.  
20 Provisions relating to the municipal courts are now in “Chapter 4. Municipal Courts and Superior  
21 Courts” (commencing with Section 71).

### 22 **Heading of Former Article 1 (commencing with Section 81) (amended)**

23 SEC. \_\_. The article heading immediately preceding Section 81 of the Code of  
24 Civil Procedure is amended, to read:

### 25 ~~Article 1. General Provisions~~ 2. Original Jurisdiction

26 **Comment.** The heading “Article 1. General Provisions” is amended to reflect the elimination  
27 of the justice court, and the authority of the municipal and superior courts in each county to unify  
28 their operations in the superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

29 Chapter 4 (Municipal Courts and Superior Courts) of Title 1 of Part 1 is now divided into three  
30 articles: “Article 1. Miscellaneous Provisions” (commencing with Section 71), “Article 2.  
31 Original Jurisdiction,” and “Article 3. Economic Litigation Procedures” (commencing with  
32 Section 90).

33  **Staff Note.** For further explanation of this proposal, see the Staff Note on insertion of an  
34 article heading immediately preceding Section 71.

### 35 **Code Civ. Proc. § 81 (repealed). Effect of chapter and article headings**

36 SEC. \_\_. Section 81 of the Code of Civil Procedure is repealed.

37 ~~81. The headings to this chapter and the articles in this chapter shall not be~~  
38 ~~deemed to govern or limit the scope or meaning of such chapter and articles.~~

39 **Comment.** Section 81, pertaining to former “Chapter 5. Municipal Courts and Justice Courts,”  
40 is repealed to reflect the elimination of the justice court, and the authority of the municipal and  
41 superior courts in each county to unify their operations in the superior court. Cal. Const. art. VI,  
42 §§ 5(b), (e), 10.

1 **Code Civ. Proc. § 81 (added). Amount in controversy**

2 SEC. \_\_\_. Section 81 is added to the Code of Civil Procedure, to read:

3 81. “Amount in controversy” means the amount of the demand, or the recovery  
4 sought, or the value of the property, or the amount of the lien, which is in  
5 controversy, exclusive of attorney fees, interest, and costs.

6 **Comment.** Section 81 continues the former second sentence of Section 91 without substantive  
7 change. For discussion of aggregating amounts in controversy in matters involving multiple  
8 causes, see R. Weil & I. Brown, Jr., *California Practice Guide: Civil Procedure Before Trial*,  
9 *Jurisdiction and Venue* §§ 3:97 to 3:111, at 3-22 to 3-24 (1996); 2B Witkin, *California Procedure*  
10 *Jurisdiction* §§ 38-44, at 582-86 (4th ed. 1996).

11 **Code Civ. Proc. § 82 (repealed). Jurisdiction of superior court**

12 SEC. \_\_\_. Section 82 of the Code of Civil Procedure is repealed.

13 ~~82. The establishment of a municipal court, or justice court, in a county, or city  
14 and county, or the determination of the jurisdiction of such courts by the  
15 Legislature, shall not affect, alter or diminish the previously existing jurisdiction  
16 of the superior court of any county, or city and county, other than that of the  
17 county, or city and county, wherein such municipal or justice court is established.~~

18 **Comment.** Section 82 is repealed to reflect the elimination of the justice court, and the  
19 authority of the municipal and superior courts in each county to unify their operations in the  
20 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. As to the effect of establishing a municipal  
21 court, former Section 82 is continued without substantive change in Section 89.

22 • **Code Civ. Proc. § 82 (added). Alpha causes**

23 SEC. \_\_\_. Section 82 is added to the Code of Civil Procedure, to read:

24 82. (a) Any civil cause of a type within the appellate jurisdiction of the court of  
25 appeal on June 30, 1995, is an alpha cause.

26 (b) Any other civil cause is an alpha cause unless it is classified by statute as a  
27 beta cause.

28 **Comment.** Section 82, defining the term “alpha cause,” is added to reflect the elimination of  
29 the justice court, and the authority of the municipal and superior courts in each county to unify  
30 their operations in the superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

31 Like Article VI, Section 11 of the California Constitution, subdivision (a) differentiates  
32 between civil causes of a type within the appellate jurisdiction of the court of appeal on June 30,  
33 1995, and other civil causes. Under subdivision (a), the former types of causes are alpha causes.  
34 As such, they are within the appellate jurisdiction of the court of appeal (see Sections 85 (alpha  
35 matters) & 904.5 (appellate jurisdiction) and Cal. Const. Art. VI, § 11), and they are not subject to  
36 economic litigation procedures (see Section 91). Other consequences follow as well. *See, e.g.*,  
37 Section 489.220 (amount of undertaking).

38 Subdivision (b) extends the term “alpha cause” to any civil cause that is not classified by statute  
39 as a “beta cause.” For examples of provisions classifying civil causes as beta causes, see Section  
40 86 (beta causes) & Comment. Formerly, provisions such as these stated that certain causes were  
41 within the original jurisdiction of the municipal court. *See, e.g.*, former Section 86. All other  
42 causes were within the original jurisdiction of the superior court and within the appellate  
43 jurisdiction of the court of appeal (except cases imposing a death sentence, which were sent (and  
44 still go) directly to the Supreme Court). See former Cal. Const. art. VI, §§ 10, 11. Section 82  
45 continues that policy by classifying these causes as alpha causes, which are necessarily subject to  
46 the original jurisdiction of the superior court (see Sections 87 (original jurisdiction of superior

1 court) and 88 (original jurisdiction of municipal court)) and the appellate jurisdiction of the court  
2 of appeal (see Section 904.5 (appellate jurisdiction)).  
3

☞ **Staff Note.**

(1) On distinguishing between alpha causes and beta causes, and between alpha matters and beta matters, see Memorandum 97-38.

(2) In conjunction with Sections 83 (alpha matters) and 904.5 (appellate jurisdiction), Section 82 would implement the constitutional directive that

[t]he Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in other causes prescribed by statute.

[Cal. Const. art. VI, § 11 (as revised by SCA 4).]

In light of the constitutional reference to “the appellate jurisdiction of the courts of appeal on June 30, 1995,” the Commission should consider the possibility of cataloging or memorializing the appellate jurisdiction of the courts of appeal on June 30, 1995. Would it be helpful to compile a statutory list of “causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995?” How about statutorily memorializing that certain causes were within the appellate jurisdiction of the courts of appeal on June 30, 1995, without trying to compile an exhaustive list? Although efforts along these lines may be useful, the staff’s inclination is to put this on the Commission’s list of potential study topics, rather than tackling it in the Commission’s 1998 bill to implement SCA 4.

4 **Code Civ. Proc. § 83 (repealed). Concurrent jurisdiction**

5 SEC. \_\_. Section 83 of the Code of Civil Procedure is repealed.

6 ~~83. The jurisdiction of municipal and justice courts is the same and concurrent.~~

7 **Comment.** Section 83 is repealed to reflect the elimination of the justice court. Cal. Const. art.  
8 VI, § 5(b).

9 • **Code Civ. Proc. § 83 (added). Alpha matters**

10 SEC. \_\_. Section 83 is added to the Code of Civil Procedure, to read:

11 83. A matter is an “alpha matter” if it satisfies either of the following conditions:

12 (a) The matter includes an alpha cause.

13 (b) The amount in controversy exceeds twenty five thousand dollars (\$25,000).

14 **Comment.** Section 83 is added to reflect the elimination of the justice court, and the authority  
15 of the municipal and superior courts in each county to unify their operations in the superior court.  
16 Cal. Const. art. VI, §§ 5(b), (e), 10.

17 Under subdivision (a), any matter that includes an alpha cause is an alpha matter and therefore  
18 subject to the appellate jurisdiction of the court of appeal. See Section 904.5 (appellate  
19 jurisdiction). Formerly, each county had one or more municipal courts and a superior court, and  
20 causes like those now classified as alpha causes were within the original jurisdiction of the  
21 superior court and subject to the appellate jurisdiction of the court of appeal. Where such a cause  
22 was properly joined with a cause that could only be brought in municipal court if asserted  
23 separately, the entire matter would be tried in superior court and any appeal would go to the court  
24 of appeal. *See, e.g.,* *Armstrong v. Transcontinental Land & Water Co.*, 134 Cal. App. 2d Supp.  
25 889, 285 P.2d 1031 (1955) (joinder of equitable cross-complaint compelled transfer of entire

1 action to superior court). By making any matter including an alpha cause subject to the appellate  
2 jurisdiction of the court of appeal, Sections 83 and 904.5 continue that policy.

3 Similarly, subdivision (b) continues the effect of former law, under which the jurisdictional  
4 limit of the municipal court was \$25,000, and any matter with an amount in controversy  
5 exceeding \$25,000 was within the original jurisdiction of the superior court and subject to the  
6 appellate jurisdiction of the court of appeal. *See, e.g.*, B. Witkin, California Procedure, *Courts* §  
7 249, at 323-25 (4th ed. 1996). Now, such a matter is an alpha matter and therefore subject to the  
8 appellate jurisdiction of the court of appeal. See Section 904.5 (appellate jurisdiction). For  
9 discussion of aggregating amounts in controversy in matters involving multiple causes, see R.  
10 Weil & I. Brown, Jr., California Practice Guide: Civil Procedure Before Trial, *Jurisdiction and*  
11 *Venue* §§ 3:97 to 3:111, at 3-22 to 3-24 (1996); 2B Witkin, California Procedure *Jurisdiction* §§  
12 38-44, at 582-86 (4th ed. 1996).

13 See Sections 81 (amount in controversy), 82 (alpha cause). For examples of provisions using  
14 the term “alpha matter,” see Sections 86 (beta causes), 425.10 (statement of facts), 430.10  
15 (objection to complaint or cross-complaint), 489.220 (amount of undertaking), 720.160  
16 (undertaking by creditor), 720.260 (undertaking by creditor), 904.1 (taking appeal in alpha  
17 matter), 904.5 (appellate jurisdiction), 1033 (small recovery), 1134 (judgment and costs).

18 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
19 matters and beta matters, see Memorandum 97-38.

#### 20 **Code Civ. Proc. § 84 (repealed). Process**

21 SEC. \_\_\_. Section 84 of the Code of Civil Procedure is repealed.

22 ~~84. The process of municipal courts and justice courts shall extend throughout~~  
23 ~~the State.~~

24 **Comment.** Section 84 is repealed to reflect the elimination of the justice court. Cal. Const. art  
25 VI, § 5(b). As to municipal courts, former Section 84 is continued in Section 71 without  
26 substantive change.

#### 27 **Code Civ. Proc. § 85 (repealed). Money judgments**

28 SEC. \_\_\_. Section 85 of the Code of Civil Procedure is repealed.

29 ~~85. If the judgment or order in a municipal court or justice court in any action or~~  
30 ~~proceeding in which the defendant has appeared is for the payment of money by~~  
31 ~~the defendant, the defendant shall pay the same immediately or at any time and~~  
32 ~~upon such any terms and conditions, including installment payments, which the~~  
33 ~~court may prescribe. The court may amend the terms and conditions for payment~~  
34 ~~of the judgment or order at any time to provide for installment payments for good~~  
35 ~~cause upon motion by a party and notice to all affected parties, regardless of the~~  
36 ~~nature of the underlying debt and regardless whether the moving party appeared~~  
37 ~~before entry of such judgment or order. In any determination regarding the~~  
38 ~~imposition of terms and conditions upon the payment of the judgment, the court~~  
39 ~~shall consider any factors which would be relevant to the determination of a claim~~  
40 ~~for exemption pursuant to Chapter 4 (commencing with Section 703.010) of~~  
41 ~~Division 2 of Title 9 of Part 2 or the examination of a debtor pursuant to Article 2~~  
42 ~~(commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part~~  
43 ~~2.~~

1 **Comment.** Section 85 is repealed to reflect the elimination of the justice court, and the  
2 authority of the municipal and superior courts in each county to unify their operations in the  
3 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

4 The substance of former Section 85 is continued in Section 582.5 without change, except that  
5 former Section 85 referred to the municipal and justice courts, whereas Section 582.5 pertains to  
6 beta matters.

7 ☞ **Staff Note.** Section 85 authorizes the municipal and justice courts to set terms and conditions  
8 for payment of money judgments entered in those courts. With revisions to account for trial court  
9 unification by county option, it fits better in Chapter 1 (Judgment in General) (commencing with  
10 Section 577) of Title 8 of Part 2 of the CCP, than in the staff's proposed Article 2 (Original  
11 Jurisdiction) (commencing with Section 83) of Chapter 4 of Title 1 of Part 1. For further  
12 discussion of Section 85, see proposed Section 582.5 below.

13 • **Code Civ. Proc. § 85 (added). Beta matters**

14 SEC. \_\_. Section 85 is added to the Code of Civil Procedure, to read:

15 85. A matter is a "beta matter" if it satisfies both of the following conditions:

16 (a) Every cause in the matter is a beta cause.

17 (b) The amount in controversy is twenty five thousand dollars (\$25,000) or less.

18 **Comment.** Section 85 is added to reflect the elimination of the justice court, and the authority  
19 of the municipal and superior courts in each county to unify their operations in the superior court.  
20 Cal. Const. art. VI, §§ 5(b), (e), 10.

21 Under subdivision (a), every cause in a beta matter must be a beta cause. If a matter includes an  
22 alpha cause, it is an alpha matter and therefore subject to the appellate jurisdiction of the court of  
23 appeal. See Sections 83 (alpha matters) & 904.5 (appellate jurisdiction) & Comments. A beta  
24 matter is subject to the appellate jurisdiction of the appellate division of the superior court.  
25 Section 904.5. Formerly, each county had one or more municipal courts and a superior court, and  
26 causes like those now classified as beta causes were within the original jurisdiction of the  
27 municipal court and subject to the appellate jurisdiction of the appellate division. See, e.g., former  
28 Sections 77 & 86. Where such a cause was properly joined with a cause that could only be  
29 brought in superior court, the entire matter would be tried in superior court and any appeal would  
30 go to the court of appeal. See, e.g., *Armstrong v. Transcontinental Land & Water Co.*, 134 Cal.  
31 App. 2d Supp. 889, 285 P.2d 1031 (1955) (joinder of equitable cross-complaint compelled  
32 transfer of entire action to superior court). By requiring that every cause in a beta matter be a beta  
33 cause, Section 85, together with Section 904.5, continues the policy that a matter with multiple  
34 causes is subject to the appellate jurisdiction of the appellate division only if all of the causes are  
35 similar to those previously triable only in municipal court (if asserted separately).

36 Similarly, subdivision (b) continues the effect of former law, under which the jurisdictional  
37 limit of the municipal court was \$25,000 and an appeal from the municipal court was subject to  
38 the appellate jurisdiction of the appellate division of the superior court. See, e.g., B. Witkin,  
39 *California Procedure, Courts* § 249, at 323-25 (4th ed. 1996). Now, a matter with an amount in  
40 controversy of \$25,000 or less and no alpha causes is a beta matter and thus subject to the  
41 appellate jurisdiction of the appellate division. See Section 904.5 (appellate jurisdiction). For  
42 discussion of aggregating amounts in controversy in matters involving multiple causes, see R.  
43 Weil & I. Brown, Jr., *California Practice Guide: Civil Procedure Before Trial, Jurisdiction and*  
44 *Venue* §§ 3:97 to 3:111, at 3-22 to 3-24 (1996); 2B Witkin, *California Procedure Jurisdiction* §§  
45 38-44, at 582-86 (4th ed. 1996).

46 See Sections 81 (amount in controversy), 86 (beta causes), 688.010 (jurisdiction), 1710.20  
47 (filing of application). See also [insert list of provisions in other codes classifying causes as beta  
48 causes]. For examples of provisions using the term "beta matter," see Sections 86 (beta causes),  
49 88 (original jurisdiction of municipal court), 91 (application of economic litigation procedures),  
50 396a (statement of jurisdictional facts), 425.10 (statement of facts), 430.10 (objection to

1 complaint or cross-complaint), 489.220 (amount of undertaking), 580 (relief awardable in civil  
2 causes), 585.5 (judgment for payment of money in beta matter), 685.030 (satisfaction of money  
3 judgment), 720.160 (undertaking by creditor), 720.260 (undertaking by creditor), 904.2 (taking  
4 appeal in beta matter), 904.5 (appellate jurisdiction), 1033 (small recovery), 1134 (judgment and  
5 costs), 1161.2 (case court records), 1710.20 (filing of application).

6 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
7 matters and beta matters, see Memorandum 97-38.

8 • **Code Civ. Proc. § 86 (amended). Beta causes**

9 SEC. \_\_. Section 86 of the Code of Civil Procedure is amended to read:

10 86. (a) ~~Each municipal and justice court has original jurisdiction of civil cases~~  
11 ~~and proceedings as follows~~ The following civil causes are beta causes:

12 (1) ~~In all cases~~ Cases at law in which the demand, exclusive of interest, or the  
13 value of the property in controversy amounts to twenty-five thousand dollars  
14 (\$25,000) or less, ~~except. This paragraph does not apply to cases which involve the~~  
15 ~~legality of any tax, impost, assessment, toll, or municipal fine, except the courts~~  
16 ~~have jurisdiction in actions to enforce payment of delinquent unsecured personal~~  
17 ~~property taxes if the legality of the tax is not contested by the defendant.~~

18 (2) ~~In actions~~ Actions for dissolution of partnership where the total assets of the  
19 partnership do not exceed twenty-five thousand dollars (\$25,000); ~~in actions of~~  
20 ~~interpleader where the amount of money or the value of the property involved does~~  
21 ~~not exceed twenty-five thousand dollars (\$25,000).~~

22 (3) ~~In actions~~ Actions to cancel or rescind a contract when the relief is sought in  
23 connection with an action to recover money not exceeding twenty-five thousand  
24 dollars (\$25,000) or property of a value not exceeding twenty-five thousand  
25 dollars (\$25,000), paid or delivered under, or in consideration of, the contract; ~~in~~  
26 ~~actions to revise a contract where the relief is sought in an action upon the contract~~  
27 ~~if the court otherwise has jurisdiction of the action~~ is a beta matter.

28 (4) ~~In all proceedings~~ Proceedings in forcible entry or forcible or unlawful  
29 ~~detainer where the whole amount of damages claimed is twenty-five thousand~~  
30 ~~dollars (\$25,000) or less.~~

31 (5) ~~In all actions~~ Actions to enforce and foreclose liens on personal property  
32 where the amount of the liens is twenty-five thousand dollars (\$25,000) or less.

33 (6) ~~In all actions~~ Actions to enforce and foreclose liens of mechanics,  
34 materialmen, artisans, laborers, and of all other persons to whom liens are given  
35 under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of  
36 Part 4 of Division 3 of the Civil Code, or to enforce and foreclose an assessment  
37 lien on a common interest development as defined in Section 1351 of the Civil  
38 Code, where the amount of the liens is twenty-five thousand dollars (\$25,000) or  
39 less. However, where an action to enforce the lien is ~~pending in a municipal or~~  
40 ~~justice court, and affects property which is also affected by a similar action~~  
41 ~~pending in a superior court~~ pending alpha matter, or where the total amount of the  
42 liens sought to be foreclosed against the same property by ~~action or actions in a~~  
43 ~~municipal or justice court aggregates an amount in excess of twenty-five thousand~~

1 dollars (\$25,000), the action is an alpha cause, and if the action is pending in a  
2 municipal court, the municipal or justice court in which any such action, or  
3 actions, is, or are, pending, upon motion of any interested party, the municipal  
4 court shall order the action or actions pending therein transferred to the proper  
5 superior court. Upon the making of the order, the same proceedings shall be taken  
6 as are provided by Section 399 with respect to the change of place of trial.

7 (7) ~~In actions~~ Actions for declaratory relief when brought pursuant to either of  
8 the following:

9 (A) By way of cross-complaint as to a right of indemnity with respect to the  
10 relief demanded in the complaint or a cross-complaint in an action or proceeding  
11 ~~otherwise within the jurisdiction of the municipal or justice court~~ that is a beta  
12 matter.

13 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and  
14 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of  
15 Division 3 of the Business and Professions Code, where the amount in controversy  
16 is twenty-five thousand dollars (\$25,000) or less.

17 (8) ~~To~~ Actions to issue temporary restraining orders and preliminary injunctions,  
18 to take accounts, and to appoint receivers where necessary to preserve the property  
19 or rights of any party to ~~an action of which the court has jurisdiction~~ a beta matter;  
20 to appoint a receiver and to make any order or perform any act, pursuant to Title 9  
21 (commencing with Section 680.010) of Part 2 (enforcement of judgments) in a  
22 beta matter; to determine title to personal property seized in ~~an action pending in~~  
23 ~~such court~~ a beta matter.

24 (9) ~~In all actions~~ Actions under Article 3 (commencing with Section 708.210) of  
25 Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in  
26 personal property or to enforce the liability of the debtor of a judgment debtor  
27 where the interest claimed adversely is of a value not exceeding twenty- five  
28 thousand dollars (\$25,000) or the debt denied does not exceed twenty-five  
29 thousand dollars (\$25,000).

30 (10) ~~In all arbitration-related~~ Arbitration-related petitions filed pursuant to either  
31 of the following:

32 (A) Pursuant to Article 2 (commencing with Section 1292) of Chapter 5 of Title  
33 9 of Part 3, except for uninsured motorist arbitration proceedings in accordance  
34 with Section 11580.2 of the Insurance Code, if the petition is filed before the  
35 arbitration award becomes final and the matter to be resolved by arbitration is  
36 ~~within the jurisdiction of the municipal or justice court~~ a beta matter under  
37 paragraphs (1) to (9), inclusive, or the petition if is filed after the arbitration award  
38 becomes final and the amount of the award and all other rulings, pronouncements,  
39 and decisions made in the award are ~~within the jurisdiction of the municipal or~~  
40 ~~justice court under~~ paragraphs (1) to (9), inclusive.

41 (B) To confirm, correct, or vacate a fee arbitration award between an attorney  
42 and client that is binding or has become binding, pursuant to Article 13  
43 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and

1 Professions Code, where the arbitration award is twenty-five thousand dollars  
2 (\$25,000) or less.

3 (11) Actions brought pursuant to the Long-Term Care, Health, Safety, and  
4 Security Act of 1973 (Chapter 2.4 (commencing with Section 1417) of Division 2  
5 of the Health and Safety Code), if civil penalties are not sought or amount to  
6 twenty-five thousand dollars (\$25,000) or less. On motion of either party, an  
7 action in this category may be transferred from a municipal court to a superior  
8 court for consolidation with any other citation enforcement action pending in the  
9 superior court.

10 (b) ~~Each municipal and justice court has jurisdiction of cases in equity as follows~~  
11 The following civil causes in equity are beta causes:

12 (1) ~~In all cases~~ Cases to try title to personal property when the amount involved  
13 is not more than twenty-five thousand dollars (\$25,000).

14 (2) ~~In all cases~~ Cases when equity is pleaded as a defensive matter in any case  
15 otherwise properly pending in a municipal or justice court that is otherwise a beta  
16 matter.

17 (3) ~~To~~ Cases to vacate a judgment or order of such ~~municipal or justice court~~  
18 obtained in a beta matter through extrinsic fraud, mistake, inadvertence, or  
19 excusable neglect.

20 (c) ~~In any action that is otherwise within its jurisdiction, the court may impose~~  
21 ~~liability whether the theory upon which liability is sought to be imposed involves~~  
22 ~~legal or equitable principles.~~

23 (d) ~~Changes in the jurisdictional ceilings made by amendments to this section at~~  
24 ~~the 1977-78 Regular Session or the 1985-86 Regular Session of the Legislature~~  
25 ~~shall not constitute a basis for the transfer to another court of any case pending at~~  
26 ~~the time such changes become operative.~~

27 **Comment.** Section 86 is amended to reflect the elimination of the justice court, and the  
28 authority of the municipal and superior courts in each county to unify their operations in the  
29 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

30 Subdivisions (a) and (b), which formerly specified that the municipal and justice courts had  
31 jurisdiction of the listed civil causes, are amended to classify those causes as beta causes.  
32 Although Section 86 includes numerous causes, it is not an exhaustive list of beta causes. For  
33 other examples, see Sections 688.010 (jurisdiction) and 1710.20 (filing of application). See also  
34 [insert list of provisions in other codes classifying causes as beta causes]. If every cause in a  
35 matter is a beta cause and the amount in controversy is \$25,000 or less, the matter is a beta  
36 matter. See Section 85 (beta matters) & Comment.

37 Paragraph (a)(11) is new. Formerly, Section 86.1 provided that the municipal and justice courts  
38 had original jurisdiction over actions pursuant to the Long-Term Care, Health, Safety, and  
39 Security Act of 1973 seeking no civil penalties or civil penalties of less than \$25,000. Paragraph  
40 (a)(11) of Section 86 now provides that such an action is a beta cause.

41 Subdivision (c) is deleted, but its former substance is continued in Section 580, with  
42 modification to reflect the elimination of the justice court, and the authority of the municipal and  
43 superior courts in each county to unify their operations in the superior court. Cal. Const. art. VI,  
44 §§ 5(b), (e), 10.

45 Subdivision (d), pertaining to changes in jurisdictional ceilings made at the 1977-78 Regular  
46 Session and 1985-86 Regular Session of the Legislature, is deleted as obsolete.

1 The amendment also makes technical changes, such as rewording paragraph (a)(1) to improve  
2 clarity.

3 ☞ **Staff Note.**

4 (1) On distinguishing between alpha causes and beta causes, and between alpha matters and  
5 beta matters, see Memorandum 97-38.

6 (2) Although the Commission decided against compiling an exhaustive catalogue of cases and  
7 proceedings classified as beta causes (see 5/1/97-5/2/97 Minutes at pp 11-12), for purposes of  
8 organizational clarity the staff does recommend that the substance of Section 86.1 be moved to  
9 Section 86.

10 **Code Civ. Proc. § 86.1 (repealed). Long-Term Care, Health, Safety, and Security Act**

11 SEC. \_\_. Section 86.1 of the Code of Civil Procedure is repealed.

12 ~~86.1. In addition to Section 86, each municipal and justice court has original~~  
13 ~~jurisdiction of civil cases and proceedings in actions brought pursuant to the Long-~~  
14 ~~Term Care, Health, Safety, and Security Act of 1973 (Chapter 2.4 (commencing~~  
15 ~~with Section 1417) of Division 2 of the Health and Safety Code) if civil penalties~~  
16 ~~are not sought or amount to twenty-five thousand dollars (\$25,000) or less. These~~  
17 ~~actions may be transferred to the superior court for consolidation with any other~~  
18 ~~citation enforcement action pending in that court, on the motion of either party.~~

19 **Comment.** Section 86.1 is repealed to reflect the elimination of the justice court, and the  
20 authority of the municipal and superior courts in each county to unify their operations in the  
21 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

22 Under Section 86(a)(11), the actions covered by former Section 86.1 are now classified as beta  
23 causes.

24 ☞ **Staff Note.** Although the Commission decided against compiling an exhaustive catalogue of  
25 cases and proceedings classified as beta causes (see 5/1/97-5/2/97 Minutes at pp 11-12), for  
26 purposes of organizational clarity the staff does recommend that the substance of Section 86.1 be  
27 moved to Section 86.

28 **Code Civ. Proc. § 87 (repealed). Corporation as party**

29 SEC. \_\_. Section 87 of the Code of Civil Procedure is repealed.

30 ~~87. Where a corporation is a party in the municipal or justice court it may appear~~  
31 ~~through a director, an officer, or an employee, whether or not such person is an~~  
32 ~~attorney at law.~~

33 **Comment.** Section 87 is repealed as an unconstitutional intrusion on the power of a court to  
34 regulate who practices before it. *Merco Construction Engineers, Inc. v. Municipal Court*, 21 Cal.  
35 3d 724, 581 P.2d 636, 147 Cal. Rptr. 631 (1978). *See also Say & Say, Inc. v. Ebershoff*, 20 Cal.  
36 App. 3d 1759, 25 Cal. Rptr. 2d 703, 709 (1993); *Albion River Watershed Protection Ass'n v.*  
37 *Dep't of Forestry & Fire Protection*, 20 Cal. App. 3d 34, 24 Cal. Rptr. 2d 341, 343 (1993); *Clean*  
38 *Air Transport Systems v. San Mateo County Transit Dist.*, 198 Cal. App. 3d 576, 578-79, 243  
39 Cal. Rptr. 799 (1988).

40 ☞ **Staff Note.** The Merco case cited in the proposed Comment affirms a decision by the  
41 Honorable Arthur K. Marshall. Consistent with Merco, in 1978 the Commission recommended  
42 repeal of Section 87. See the Commission's 1978 Report on Statutes Repealed by Implication or  
43 Held Unconstitutional, *in* 14 Cal. L. Revision Comm'n Reports 228 (1978). Nonetheless, the  
44 statute is still on the books.

1 **Code Civ. Proc. § 87 (added). Original jurisdiction of superior court**

2 SEC. \_\_. Section 87 is added to the Code of Civil Procedure, to read:

3 87. (a) Except as otherwise provided by statute, a superior court has original  
4 jurisdiction in all causes.

5 (b) In proceedings for extraordinary relief in the nature of mandamus, certiorari,  
6 and prohibition directed to the superior court, the superior court has original  
7 jurisdiction only of causes subject to its appellate jurisdiction, and the superior  
8 court may exercise its appellate jurisdiction only through its appellate division.

9 **Comment.** Section 87 tracks Article VI, Section 10 of the California Constitution. The original  
10 jurisdiction of a unified superior court is broad. In a county in which the municipal and superior  
11 courts have not unified, the original jurisdiction of the superior court is more limited. See Section  
12 88 (original jurisdiction of municipal court).

13 **Code Civ. Proc. § 88 (repealed). Clerks of justice courts**

14 SEC. \_\_. Section 88 of the Code of Civil Procedure is repealed.

15 ~~88. Clerks of justice courts, in addition to the other powers conferred upon them  
16 by law, shall have power to administer and certify oaths to affidavits, and all  
17 papers, documents or instruments used in, or in connection with, the civil actions  
18 or proceedings in such justice courts and to issue summons and other writs and  
19 notices in civil actions in said courts in the name of the judge before whom the  
20 same is pending or out of whose court the same is issued.~~

21 **Comment.** Section 88 is repealed to reflect the elimination of the justice court. Cal. Const. art.  
22 VI, § 5(b).

23 **• Code Civ. Proc. § 88 (added). Original jurisdiction of municipal court**

24 SEC. \_\_. Section 88 is added to the Code of Civil Procedure, to read:

25 88. Except as otherwise provided by statute, in a county in which the municipal  
26 and superior courts have not unified, the municipal court has, and the superior  
27 court does not have, original jurisdiction of any beta matter.

28 **Comment.** Section 88 is added to reflect the elimination of the justice court, and the authority  
29 of the municipal and superior courts in each county to unify their operations in the superior court.  
30 Cal. Const. art. VI, §§ 5(b), (e), 10. Formerly, each county had one or more municipal courts and  
31 a superior court, and statutes like former Section 86 specified that certain causes were within the  
32 original jurisdiction of the municipal court. Now, the matters formerly triable only in municipal  
33 court are classified as beta matters. See Section 85 & Comment. By giving the municipal court  
34 original jurisdiction of such matters in counties where the municipal and superior courts have not  
35 unified, Section 88 continues the effect of former law.

36 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
37 matters and beta matters, see Memorandum 97-38.

38 **Code Civ. Proc. § 89 (repealed). Issuance of papers in blank**

39 SEC. \_\_. Section 87 of the Code of Civil Procedure is repealed.

40 ~~89. The summons, execution, and every other paper made or issued by a judge of  
41 a justice court, except a subpoena, must be issued without a blank left to be filled  
42 by another, otherwise it is void.~~

1 **Comment.** Section 88 is repealed to reflect the elimination of the justice court. Cal. Const. art.  
2 VI, § 5(b).

3 **Code Civ. Proc. § 89 (added). Establishment of municipal court**

4 SEC. \_\_. Section 89 is added to the Code of Civil Procedure, to read:

5 89. The establishment of a municipal court in a county, or the determination of  
6 the jurisdiction of a municipal court by the Legislature, shall not affect, alter, or  
7 diminish the previously existing jurisdiction of the superior court of any county,  
8 other than that of the county where the municipal court is established.

9 **Comment.** As to municipal courts, Section 89 continues former Section 82 without substantive  
10 change.

11 **Heading of Former Article 2 (commencing with Section 90) (amended)**

12 SEC. \_\_. The heading of Article 2 (commencing with Section 90) of Chapter 4  
13 (former Chapter 5) of Title 1 of Part 1 of the Code of Civil Procedure is amended,  
14 to read:

15 Article 2. 3. Economic Litigation for Municipal and Justice Courts  
16 Procedures

17 **Comment.** The heading “Article 2. Economic Litigation for Municipal and Justice Courts” is  
18 amended to reflect the elimination of the justice court, and the authority of the municipal and  
19 superior courts in each county to unify their operations in the superior court. Cal. Const. art. VI,  
20 §§ 5(b), (e), 10.

21 Chapter 4 (Municipal Courts and Superior Courts) of Title 1 of Part 1 is now divided into three  
22 articles: “Article 1. Miscellaneous Provisions” (commencing with Section 71), “Article 2.  
23 Original Jurisdiction” (commencing with Section 81), and “Article 3. Economic Litigation  
24 Procedures.”

25 ☞ **Staff Note.** For further explanation of this proposal, see the Staff Note on insertion of an  
26 article heading immediately preceding Section 71.

27 **• Code Civ. Proc. § 91 (amended). Application of economic litigation procedures**

28 SEC. \_\_. Section 91 of the Code of Civil Procedure is amended to read:

29 91. (a) Except as otherwise provided in this section, the provisions of this article  
30 apply to every ~~municipal and justice court civil action~~ beta matter, including cases  
31 submitted to arbitration or on the arbitration hearing list, ~~pending in the municipal~~  
32 ~~and justice courts, on or after July 1, 1983, in which the amount in controversy is~~  
33 ~~twenty-five thousand dollars (\$25,000) or less. “Amount in controversy” means~~  
34 ~~the amount of the demand, or the recovery sought, or the value of the property, or~~  
35 ~~the amount of the lien, which is in controversy in the action, exclusive of attorney~~  
36 ~~fees, interest, and costs. These provisions also apply to any action transferred to a~~  
37 ~~municipal or justice court by reason of lack of jurisdiction in the court in which it~~  
38 ~~was filed.~~

39 (b) The provisions of this article do not apply to any action under Chapter ~~5A~~ 5  
40 (commencing with Section ~~446~~ 116.110) or any proceeding under Chapter 4  
41 (commencing with Section 1159) of Title 3 of Part 3.

1 (c) Any action may, upon noticed motion, be withdrawn from the provisions of  
2 this article, upon a showing that it is impractical to prosecute or defend the action  
3 within the limitations of these provisions.

4 ~~(d) Special demurrers, motions to strike, and requests for discovery, pending or~~  
5 ~~determined prior to July 1, 1983, shall be subject to the law in effect on June 30,~~  
6 ~~1983.~~

7 **Comment.** Subdivision (a) of Section 91 is amended to reflect the elimination of the justice  
8 court, and the authority of the municipal and superior courts in each county to unify their  
9 operations in the superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. Formerly, each county had  
10 one or more municipal courts and a superior court, and economic litigation procedures applied to  
11 cases tried in the municipal court. See former Section 91. Now, the matters formerly triable in  
12 municipal court are classified as beta matters. See Section 85 & Comment. By making economic  
13 litigation procedures applicable to beta matters, Section 91 continues the effect of former law.

14 The former second sentence of subdivision (a) is continued without substantive change in  
15 Section 81 (amount in controversy).

16 Subdivision (b) is amended to delete the reference to former Chapter 5A (commencing with  
17 Section 116), which has been repealed. Instead, subdivision (b) now refers to Chapter 5  
18 (commencing with Section 116.110), which contains the current small claims provisions.

19 Subdivision (d) is deleted as obsolete.

20 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
21 matters and beta matters, see Memorandum 97-38.

## 22 **Heading of Chapter 5.5 (commencing with Section 116.110) (amended)**

23 SEC. \_\_. The heading of Chapter 5.5 (commencing with Section 116.110) of  
24 Title 1 of Part 1 of the Code of Civil Procedure is amended, to read:

### 25 Chapter 5.5 5 Small Claims Court Division

26 **Comment.** The heading “Chapter 5.5 Small Claims Court” is amended to correct the reference  
27 to the small claims court, which is colloquially acceptable but technically incorrect. See Section  
28 116.210 & Comment.

## 29 **Code Civ. Proc. § 116.120 (amended). Legislative findings and declaration**

30 SEC. \_\_. Section 116.120 of the Code of Civil Procedure is amended to read:

31 116.120. The Legislature hereby finds and declares as follows:

32 (a) Individual minor civil disputes are of special importance to the parties and of  
33 significant social and economic consequence collectively.

34 (b) In order to resolve minor civil disputes expeditiously, inexpensively, and  
35 fairly, it is essential to provide a judicial forum accessible to all parties directly  
36 involved in resolving these disputes.

37 (c) The small claims divisions of unified superior courts and municipal and  
38 justice courts have been established to provide a forum to resolve minor civil  
39 disputes, and for that reason constitute a fundamental element in the administration  
40 of justice and the protection of the rights and property of individuals.

41 (d) The small claims divisions of justice and unified superior courts and  
42 municipal courts, the provisions of this chapter, and the rules of the Judicial  
43 Council regarding small claims actions shall operate to ensure that the

1 convenience of parties and witnesses who are individuals shall prevail, to the  
2 extent possible, over the convenience of any other parties or witnesses.

3 **Comment.** Section 116.120 is amended to reflect the elimination of the justice court, and the  
4 authority of the municipal and superior courts in each county to unify their operations in the  
5 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

6 **Code Civ. Proc. § 116.210 (amended). Small claims division**

7 SEC. \_\_\_. Section 116.210 of the Code of Civil Procedure is amended to read:

8 116.210. In each ~~justice court~~ unified superior court and each municipal court  
9 there shall be a small claims division , which may be known as the small claims  
10 court.

11 **Comment.** Section 116.210 is amended to reflect the elimination of the justice court, and the  
12 authority of the municipal and superior courts in each county to unify their operations in the  
13 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

14 Section 116.210 is also amended to expressly authorize continued colloquial use of the name  
15 “small claims court,” even though the small claims division is not a separate court.

16 ☞ **Staff Note.** As discussed at the Commission’s meeting on May 1, 1997, the term “small  
17 claims court” is a misnomer, because the entity that tries small claims is actually a division of the  
18 municipal court. To prevent confusion concerning court structure, Professor Kelso has replaced  
19 statutory references to the “small claims court” with references to the “small claims division.” See  
20 the proposed amendments of the following sections: 116.220, 116.231, 116.250, 116.390,  
21 116.420, 116.531, 116.540, 116.541, 116.550, 116.610, 116.720, 116.730, 116.740, 116.750,  
22 116.770, 116.780, 116.795, 116.810, 116.820, 116.840, 116.930, 116.940, 116.950, 134, 391,  
23 426.60, 1029.6, 1141.11, 1995. Because the public is accustomed to the term “small claims  
24 court,” this section would expressly authorize continued colloquial use of that term.

25 **Code Civ. Proc. § 116.220 (technical amendment). Jurisdiction**

26 SEC. \_\_\_. Section 116.220 of the Code of Civil Procedure is amended to read:

27 116.220. (a) The small claims ~~court~~ division shall have jurisdiction in the  
28 following actions:

29 (1) Except as provided in subdivisions (c), (e), and (f), for recovery of money, if  
30 the amount of the demand does not exceed five thousand dollars (\$5,000).

31 (2) Except as provided in subdivisions (c), (e), and (f), to enforce payment of  
32 delinquent unsecured personal property taxes in an amount not to exceed five  
33 thousand dollars (\$5,000), if the legality of the tax is not contested by the  
34 defendant.

35 (3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of  
36 the Civil Code if the amount of the demand does not exceed five thousand dollars  
37 (\$5,000).

38 (4) To confirm, correct, or vacate a fee arbitration award not exceeding five  
39 thousand dollars (\$5,000) between an attorney and client that is binding or has  
40 become binding, or to conduct a hearing de novo between an attorney and client  
41 after nonbinding arbitration of a fee dispute involving no more than five thousand  
42 dollars (\$5,000) in controversy, pursuant to Article 13 (commencing with Section  
43 6200) of Chapter 4 of Division 3 of the Business and Professions Code.

1 (b) In any action seeking relief authorized by subdivision (a), the court may  
2 grant equitable relief in the form of rescission, restitution, reformation, and  
3 specific performance, in lieu of, or in addition to, money damages. The court may  
4 issue a conditional judgment. The court shall retain jurisdiction until full payment  
5 and performance of any judgment or order.

6 (c) Notwithstanding subdivision (a), the small claims ~~court~~ division shall have  
7 jurisdiction over a defendant guarantor who is required to respond based upon the  
8 default, actions, or omissions of another, only if the demand does not exceed two  
9 thousand five hundred dollars (\$2,500).

10 (d) In any case in which the lack of jurisdiction is due solely to an excess in the  
11 amount of the demand, the excess may be waived, but any waiver shall not  
12 become operative until judgment.

13 (e) Notwithstanding subdivision (a), in any action filed by a plaintiff  
14 incarcerated in a Department of Corrections facility or a Youth Authority facility,  
15 the small claims ~~court~~ division shall have jurisdiction over a defendant only if the  
16 plaintiff has alleged in the complaint that ~~he or she~~ the plaintiff has exhausted his  
17 ~~or her~~ the plaintiff's administrative remedies against that department, including  
18 compliance with Sections 905.2 and 905.4 of the Government Code. The final  
19 administrative adjudication or determination of the plaintiff's administrative claim  
20 by the department may be attached to the complaint at the time of filing in lieu of  
21 that allegation.

22 (f) In any action governed by subdivision (e), if the plaintiff fails to provide  
23 proof of compliance with the requirements of subdivision (e) at the time of trial,  
24 the judicial officer shall, at ~~his or her~~ the officer's discretion, either dismiss the  
25 action or continue the action to give the plaintiff an opportunity to provide ~~such~~  
26 that proof.

27 (g) For purposes of this section, "department" includes an employee of a  
28 department against whom a claim has been filed under this chapter arising out of  
29 ~~his or her~~ the employee's duties as an employee of that department.

30 **Comment.** Section 116.220 is amended to make technical changes, including correction of the  
31 reference to the small claims court, which is colloquially acceptable but technically incorrect. See  
32 Section 116.210 & Comment.

33 **Code Civ. Proc. § 116.231 (amended). Limitation on number of actions filed each year**

34 SEC. \_\_. Section 116.231 of the Code of Civil Procedure is amended to read:

35 116.231. (a) Except as provided in subdivision (d), no person may file more than  
36 two small claims actions in which the amount demanded exceeds two thousand  
37 five hundred dollars (\$2,500), anywhere in the state in any calendar year.

38 (b) Except as provided in subdivision (d), if the amount demanded in any small  
39 claims action exceeds two thousand five hundred dollars (\$2,500), the party  
40 making the demand shall file a declaration under penalty of perjury attesting to the  
41 fact that not more than two small claims actions in which the amount of the

1 demand exceeded two thousand five hundred dollars (\$2,500) have been filed by  
2 that party in this state within the calendar year.

3 (c) The Legislature finds and declares that the pilot project conducted under the  
4 authority of Chapter 1196 of the Statutes of 1991 demonstrated the efficacy of the  
5 removal of the limitation on the number of actions public entities may file in the  
6 small claims ~~courts~~ divisions on claims exceeding two thousand five hundred  
7 dollars (\$2,500).

8 (d) The limitation on the number of filings exceeding two thousand five hundred  
9 dollars (\$2,500) does not apply to filings where the claim does not exceed five  
10 thousand dollars (\$5,000) which are filed by a city, county, city and county, school  
11 district, county office of education, community college district, local district, or  
12 any other local public entity. If any small claims action is filed by a city, county,  
13 city and county, school district, county office of education, community college  
14 district, local district, or any other local public entity pursuant to this section, and  
15 the defendant informs the court either in advance of the hearing by written notice  
16 or at the time of the hearing, that ~~he or she~~ the defendant is represented in the  
17 action by legal counsel, the action shall be transferred to the ~~municipal court~~  
18 general division of the municipal court, in a county in which the municipal and  
19 superior courts have not unified, or the general division of the superior court, in a  
20 county in which the municipal and superior courts have unified. A city, county,  
21 city and county, school district, county office of education, community college  
22 district, local district, or any other local public entity may not file a claim within  
23 the small claims division if the amount of the demand exceeds five thousand  
24 dollars (\$5,000).

25 **Comment.** Section 116.231 is amended to reflect the elimination of the justice court, and the  
26 authority of the municipal and superior courts in each county to unify their operations in the  
27 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

28 Section 116.250 is also amended to make technical changes, including correction of the  
29 reference to the small claims court, which is colloquially acceptable but technically incorrect. See  
30 Section 116.210 & Comment.

31 ☞ **Staff Note.** Because the small claims division is part of the municipal court in a non-unified  
32 county, it is more correct to say that a matter is transferred from the small claims division to the  
33 general division of the municipal court, than to say that a matter is transferred from the small  
34 claims division to the municipal court. Similarly, it is more correct to say that a matter is  
35 transferred from the small claims division to the general division of a unified superior court than  
36 to say that matter is transferred from the small claims division to the unified superior court.

37 **Code Civ. Proc. § 116.250 (amended). Court sessions**

38 SEC. \_\_\_. Section 116.250 of the Code of Civil Procedure is amended to read:

39 116.250. (a) Sessions of the small claims ~~court~~ division may be scheduled at any  
40 time and on any day, including Saturdays, but excluding other judicial holidays.  
41 They may also be scheduled at any public building within the judicial district,  
42 including places outside the courthouse.

43 (b) Each small claims division of a municipal court or unified superior court  
44 with four or more judicial officers shall conduct at least one night session or

1 Saturday session each month. The term “session” includes, but is not limited to, a  
2 proceeding conducted by a member of the State Bar acting as a mediator or  
3 referee.

4 **Comment.** Section 116.250 is amended to reflect the elimination of the justice court, and the  
5 authority of the municipal and superior courts in each county to unify their operations in the  
6 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

7 Section 116.250 is also amended to correct the reference to the small claims court, which is  
8 colloquially acceptable but technically incorrect. See Section 116.210 & Comment.  
9

☞ **Staff Note.** Some of the provisions in the Code of Civil Procedure refer to judicial districts. See, e.g., Code Civ. Proc. §§ 116.250 (location of court sessions), 199.2 (jury selection), 199.3 (same). Trial court unification will eliminate the municipal and justice courts and their judicial districts. Although the term “judicial district” is sometimes also used in the context of superior court, see Article 4 (commencing with Section 69640) of Chapter 5 of Title 8 of the Government Code, only the superior court in Los Angeles County is subdivided into “districts,” as opposed to “branches,” see 2 B. Witkin, *California Procedure Courts* §174, at 200 (3d ed. 1985); Memorandum 93-70 at 1. Thus, the statutory references to judicial districts will be meaningless in counties that elect to unify.

One approach to this situation would be to statutorily refer to former judicial districts, as in the proposed amendment of Section 199.2. Another approach would be to (1) retain the references to judicial districts for non-unified counties, (2) omit the references for unified counties, and (3) not attempt to provide any substitute in unified counties. Under this approach, the proximity advantages of subdividing a county for venue purposes or other purposes would be lost in counties that unify their trial courts. That problem could perhaps be remedied by allowing unified courts to adopt local rules similar to the statutory rule for non-unified courts. Different approaches may work best in different contexts. The staff is still examining some of the provisions referring to judicial districts and determining whether revisions are necessary. Here, referring to former judicial districts would be difficult if not unworkable, so the staff followed the second of the two approaches.

10  
11 **Code Civ. Proc. § 116.320 (technical amendment). Commencement of action**

12 SEC. \_\_\_. Section 116.320 of the Code of Civil Procedure is amended to read:

13 116.320. (a) A plaintiff may commence an action in the small claims court  
14 division by filing a claim under oath with the clerk of the small claims court  
15 division in person or by mail.

16 (b) The claim form shall be a simple nontechnical form approved or adopted by  
17 the Judicial Council. The claim form shall set forth a place for (1) the name and  
18 address of the defendant, if known; (2) the amount and the basis of the claim; (3)  
19 that the plaintiff, where possible, has demanded payment and, in applicable cases,  
20 possession of the property; (4) that the defendant has failed or refused to pay, and,  
21 where applicable, has refused to surrender the property; and (5) that the plaintiff  
22 understands that the judgment on ~~his or her~~ the claim will be conclusive and  
23 without a right of appeal.

24 (c) The form or accompanying instructions shall include information that the  
25 plaintiff (1) may not be represented by an attorney, (2) has no right of appeal, and

1 (3) may ask the court to waive fees for filing and serving the claim on the ground  
2 that the plaintiff is unable to pay them, using the forms approved by the Judicial  
3 Council for that purpose.

4 **Comment.** Section 116.250 is amended to make technical changes, including correction of the  
5 reference to the small claims court, which is colloquially acceptable but technically incorrect. See  
6 Section 116.210 & Comment.

7 **Code Civ. Proc. § 116.390 (amended). Transfer of claims**

8 SEC. \_\_. Section 116.390 of the Code of Civil Procedure is amended to read:

9 116.390. (a) If a defendant has a claim against a plaintiff that exceeds the  
10 jurisdictional limits stated in Sections 116.220 and 116.231, and the claim relates  
11 to the contract, transaction, matter, or event which is the subject of the plaintiff's  
12 claim, the defendant may commence an action against the plaintiff in a court of  
13 competent jurisdiction, or the general division of the court in which the small  
14 claims action is pending, and request the small claims ~~court~~ division to transfer the  
15 small claims action to that court or division.

16 (b) The defendant may make the request by filing with the small claims ~~court~~  
17 division in which the plaintiff commenced the action, at or before the time set for  
18 the hearing of that action, a declaration stating the facts concerning the defendant's  
19 action against the plaintiff with a true copy of the complaint so filed by the  
20 defendant against the plaintiff and the sum of one dollar (\$1) for a transmittal fee.  
21 The defendant shall cause a copy of the declaration and complaint to be personally  
22 delivered to the plaintiff at or before the time set for the hearing of the small  
23 claims action.

24 (c) In ruling on a motion to transfer, the small claims ~~court~~ division may do any  
25 of the following: (1) render judgment on the small claims case prior to the transfer;  
26 (2) not render judgment and transfer the small claims case; (3) refuse to transfer  
27 the small claims case on the grounds that the ends of justice would not be served.  
28 If the small claims action is transferred prior to judgment, both actions shall be  
29 tried together in the transferee court or division.

30 (d) When the small claims ~~court~~ division orders the action transferred, it shall  
31 transmit all files and papers to the transferee court or division.

32 (e) The plaintiff in the small claims action shall not be required to pay to the  
33 clerk of the transferee court or division any transmittal, appearance, or filing fee  
34 unless the plaintiff appears in the transferee court or division, in which event the  
35 plaintiff shall be required to pay the filing fee and any other fee required of a  
36 defendant in the transferee court or division. However, if the transferee court or  
37 division rules against the plaintiff in the action filed in that court or division, the  
38 court or division may award to the defendant in that action the costs incurred as a  
39 consequence of the transfer, including attorney's fees and filing fees.

40 **Comment.** Section 116.390 is amended to correct references to the small claims court, which  
41 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

42 For purposes of clarity, Section 116.390 is also amended to expressly cover transfer from one  
43 division to another, as well as transfer from the small claims division to another court. In a county

1 in which the municipal and superior courts have not unified, the small claims division is part of  
2 the municipal court, and a transfer could either be from the small claims division to the superior  
3 court, or from the small claims division to the general division of the municipal court, depending  
4 on the nature of the matter. See Sections 83 (alpha matters), 85 (beta matters), 87 (original  
5 jurisdiction of superior court), and 88 (original jurisdiction of municipal court). In a county in  
6 which the municipal and superior courts have unified, the small claims division is part of the  
7 unified superior court, and a transfer would be from the small claims division to the general  
8 division of the superior court.

9 **Code Civ. Proc. § 116.420 (technical amendment). Assigned claims**

10 SEC. \_\_. Section 116.420 of the Code of Civil Procedure is amended to read:

11 116.420. (a) No claim shall be filed or maintained in a small claims court  
12 division by the assignee of the claim.

13 (b) This section does not prevent the filing or defense of an action in the small  
14 claims court division by (1) a trustee in bankruptcy in the exercise of the trustee's  
15 duties as trustee, or (2) by the holder of a security agreement, retail installment  
16 contract, or lien contract subject to the Unruh Act (Chapter 1 (commencing with  
17 Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code) or the  
18 Automobile Sales Finance Act (Chapter 2b (commencing with Section 2981) of  
19 Title 14 of Part 4 of Division 3 of the Civil Code), purchased by the holder for the  
20 holder's portfolio of investments, provided that the holder is not an assignee for  
21 the purpose of collection.

22 (c) This section does not prevent the filing in a small claims court division by a  
23 local government which is self-insured for purposes of workers' compensation and  
24 is seeking subrogation pursuant to Section 3852 of the Labor Code.

25 **Comment.** Section 116.420 is amended to correct references to the small claims court, which  
26 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

27 **Code Civ. Proc. § 116.530 (amended). Appearance by attorney**

28 SEC. \_\_. Section 116.530 of the Code of Civil Procedure is amended to read:

29 116.530. (a) Except as permitted by this section, no attorney may take part in the  
30 conduct or defense of a small claims action.

31 (b) Subdivision (a) does not apply if the attorney is appearing to maintain or  
32 defend an action (1) by or against ~~himself or herself~~ the attorney, (2) by or against  
33 a partnership in which ~~he or she~~ the attorney is a general partner and in which all  
34 the partners are attorneys, or (3) by or against a professional corporation of which  
35 ~~he or she~~ the attorney is an officer or director and of which all other officers and  
36 directors are attorneys.

37 (c) Nothing in this section shall prevent an attorney from (1) providing advice to  
38 a party to a small claims action, either before or after the commencement of the  
39 action; (2) testifying to facts of which ~~he or she~~ the attorney has personal  
40 knowledge and about which ~~he or she~~ the attorney is competent to testify; (3)  
41 representing a party in an appeal to the appellate division of the superior court; and  
42 (4) representing a party in connection with the enforcement of a judgment.

1       **Comment.** Section 116.530 is amended to reflect the elimination of the justice court, and the  
2 authority of the municipal and superior courts in each county to unify their operations in the  
3 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. Section 116.530 is also amended to make  
4 technical changes.

5       **Code Civ. Proc. § 116.531 (technical amendment). Experts**

6       SEC. \_\_\_. Section 116.531 of the Code of Civil Procedure is amended to read:  
7       116.531. Nothing in this article shall prevent a representative of an insurer or  
8 other expert in the matter before the small claims ~~court~~ division from rendering  
9 assistance to a party in the litigation except during the conduct of the hearing,  
10 either before or after the commencement of the action, unless otherwise prohibited  
11 by law; nor shall anything in this article prevent those individuals from testifying  
12 to facts of which they have personal knowledge and about which they are  
13 competent to testify.

14       **Comment.** Section 116.531 is amended to correct the reference to the small claims court,  
15 which is colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

16       **Code Civ. Proc. § 116.540 (technical amendment). Who may appear**

17       SEC. \_\_\_. Section 116.540 of the Code of Civil Procedure is amended to read:  
18       116.540. (a) Except as permitted by this section, no individual other than the  
19 plaintiff and the defendant may take part in the conduct or defense of a small  
20 claims action.

21       (b) A corporation may appear and participate in a small claims action only  
22 through a regular employee, or a duly appointed or elected officer or director, who  
23 is employed, appointed, or elected for purposes other than solely representing the  
24 corporation in the small claims ~~court~~ division.

25       (c) A party who is not a corporation or a natural person may appear and  
26 participate in a small claims action only through a regular employee, or a duly  
27 appointed or elected officer or director, or in the case of a partnership, a partner,  
28 engaged for purposes other than solely representing the party in the small claims  
29 ~~court~~ division.

30       (d) If a party is an individual doing business as a sole proprietorship, the party  
31 may appear and participate in a small claims action by a representative and  
32 without personally appearing if both of the following conditions are met:

33       (1) The claim can be proved or disputed by evidence of an account that  
34 constitutes a business record as defined in Section 1271 of the Evidence Code, and  
35 there is no other issue of fact in the case.

36       (2) The representative is a regular employee of the party for purposes other than  
37 solely representing the party in small claims actions and is qualified to testify to  
38 the identity and mode of preparation of the business record.

39       (e) A plaintiff is not required to personally appear, and may submit declarations  
40 to serve as evidence supporting ~~his or her~~ the plaintiff's claim or allow another  
41 individual to appear and participate on ~~his or her~~ the plaintiff's behalf, if (1) the  
42 plaintiff is serving on active duty in the United States armed forces outside this

1 state, (2) the plaintiff was assigned to ~~his or her~~ the plaintiff's duty station after his  
2 ~~or her~~ the plaintiff's claim arose, (3) the assignment is for more than six months,  
3 (4) the representative is serving without compensation, and (5) the representative  
4 has appeared in small claims actions on behalf of others no more than four times  
5 during the calendar year. The defendant may file a claim in the same action in an  
6 amount not to exceed the jurisdictional limits stated in Sections 116.220 and  
7 116.231.

8 (f) A party incarcerated in a county jail, a Department of Corrections facility, or  
9 a Youth Authority facility is not required to personally appear, and may submit  
10 declarations to serve as evidence supporting ~~his or her~~ the party's claim, or may  
11 authorize another individual to appear and participate on ~~his or her~~ the party's  
12 behalf if that individual is serving without compensation and has appeared in small  
13 claims actions on behalf of others no more than four times during the calendar  
14 year.

15 (g) A defendant who is a nonresident owner of real property may defend against  
16 a claim relating to that property without personally appearing by (1) submitting  
17 written declarations to serve as evidence supporting ~~his or her~~ the defense, (2)  
18 allowing another individual to appear and participate on ~~his or her~~ the defendant's  
19 behalf if that individual is serving without compensation and has appeared in small  
20 claims actions on behalf of others no more than four times during the calendar  
21 year, or (3) taking the action described in both (1) and (2).

22 (h) A party who is an owner of rental real property may appear and participate in  
23 a small claims action through a property agent under contract with the owner to  
24 manage the rental of that property, if (1) the owner has retained the property agent  
25 principally to manage the rental of that property and not principally to represent  
26 the owner in the small claims court division, and (2) the claim relates to the rental  
27 property.

28 (i) At the hearing of a small claims action, the court shall require any individual  
29 who is appearing as a representative of a party under subdivisions (b) to (h),  
30 inclusive, to file a declaration stating (1) that the individual is authorized to appear  
31 for the party, and (2) the basis for that authorization. If the representative is  
32 appearing under subdivision (b), (c), (d), or (h), the declaration also shall state that  
33 the individual is not employed solely to represent the party in the small claims  
34 court division. If the representative is appearing under subdivision (e), (f), or (g),  
35 the declaration also shall state that the representative is serving without  
36 compensation, and has appeared in small claims actions on behalf of others no  
37 more than four times during the calendar year.

38 ~~(j) A husband or wife who sues or who is sued with his or her spouse~~ Spouses  
39 who sue or are sued together may appear and participate on behalf of ~~his or her~~  
40 spouse each other if (1) the claim is a joint claim, (2) the represented spouse has  
41 given ~~his or her~~ consent, and (3) the court determines that the interests of justice  
42 would be served.

1 (k) If the court determines that a party cannot properly present ~~his or her~~ the  
2 party's claim or defense and needs assistance, the court may in its discretion allow  
3 another individual to assist that party.

4 (l) Nothing in this section shall operate or be construed to authorize an attorney  
5 to participate in a small claims action except as expressly provided in Section  
6 116.530.

7 **Comment.** Section 116.540 is amended to make technical changes, including correction of the  
8 reference to the small claims court, which is colloquially acceptable but technically incorrect. See  
9 Section 116.210 & Comment.

10 **Code Civ. Proc. § 116.541 (technical amendment). Department of Corrections and**  
11 **Department of the Youth Authority**

12 SEC. \_\_. Section 116.541 of the Code of Civil Procedure is amended to read:

13 116.541. (a) Notwithstanding Section 116.540 or any other provision of law, the  
14 Department of Corrections or the Department of the Youth Authority may appear  
15 and participate in a small claims action through a regular employee, who is  
16 employed or appointed for purposes other than solely representing that department  
17 in the small claims court division.

18 (b) Where the Department of Corrections or the Department of the Youth  
19 Authority is named as a defendant in the small claims court division, the  
20 representative of the department is not required to personally appear to challenge  
21 the plaintiff's compliance with the pleading requirements and may submit  
22 pleadings or declarations to assert that challenge.

23 (c) At the hearing of a small claims action, the court shall require any individual  
24 who is appearing as a representative of the Department of Corrections or the  
25 Department of the Youth Authority under subdivision (a) to file a declaration  
26 stating (1) that the individual is authorized to appear for the party, (2) the basis for  
27 that authorization, and (3) that the individual is not employed solely to represent  
28 the party in the small claims court division.

29 (d) Nothing in this section shall operate or be construed to authorize an attorney  
30 to participate in a small claims action except as expressly provided in Section  
31 116.530.

32 (e) For purposes of this section, all references to the Department of Corrections  
33 or the Department of the Youth Authority include an employee ~~thereof~~ of either  
34 department, against whom a claim has been filed under this chapter arising out of  
35 ~~his or her~~ the employee's duties as an employee of that department.

36 **Comment.** Section 116.541 is amended to make technical changes, including correction of the  
37 reference to the small claims court, which is colloquially acceptable but technically incorrect. See  
38 Section 116.210 & Comment.

39 **Code Civ. Proc. § 116.550 (technical amendment). Interpreters**

40 SEC. \_\_. Section 116.550 of the Code of Civil Procedure is amended to read:

41 116.550. (a) If the court determines that a party does not speak or understand  
42 English sufficiently to comprehend the proceedings or give testimony, and needs

1 assistance in so doing, the court may permit another individual (other than an  
2 attorney) to assist that party.

3 (b) Each small claims court ~~court~~ division shall make a reasonable effort to maintain  
4 and make available to the parties a list of interpreters who are able and willing to  
5 aid parties in small claims actions either for no fee, or for a fee which is reasonable  
6 considering the nature and complexity of the claims. The list shall include  
7 interpreters for all languages that require interpretation before the court, as  
8 determined by the court in its discretion and in view of the court's experience.

9 (c) Failure to maintain a list of interpreters, or failure to include an interpreter for  
10 a particular language, shall not invalidate any proceedings before the court.

11 (d) If a court interpreter or other competent interpreter is not available to aid a  
12 party in a small claims action, at the first hearing of the case the court shall  
13 postpone the hearing one time only to allow the party the opportunity to obtain  
14 another individual (other than an attorney) to assist that party. Any additional  
15 continuances shall be at the discretion of the court.

16 **Comment.** Section 116.550 is amended to correct the reference to the small claims court,  
17 which is colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

18 **Code Civ. Proc. § 116.610 (technical amendment). Judgment**

19 SEC. \_\_. Section 116.610 of the Code of Civil Procedure is amended to read:

20 116.610. (a) The small claims ~~court~~ division shall give judgment for damages, or  
21 equitable relief, or both damages and equitable relief, within the jurisdictional  
22 limits stated in Sections 116.220 and 116.231, and may make ~~such~~ orders as to  
23 time of payment or otherwise as the court deems just and equitable for the  
24 resolution of the dispute.

25 (b) The court may, at its discretion or on request of any party, continue the  
26 matter to a later date in order to permit and encourage the parties to attempt  
27 resolution by informal or alternative means.

28 (c) The judgment shall include a determination whether the judgment resulted  
29 from a motor vehicle accident on a California highway caused by the defendant's  
30 operation of a motor vehicle, or by the operation by some other individual, of a  
31 motor vehicle registered in the defendant's name.

32 (d) If the defendant has filed a claim against the plaintiff, or if the judgment is  
33 against two or more defendants, the judgment, and the statement of decision if one  
34 is rendered, shall specify the basis for and the character and amount of the liability  
35 of each of the parties, including, in the case of multiple judgment debtors, whether  
36 the liability of each is joint or several.

37 (e) If specific property is referred to in the judgment, whether it be personal or  
38 real, tangible or intangible, the property shall be identified with sufficient detail to  
39 permit efficient implementation or enforcement of the judgment.

40 (f) In an action against several defendants, the court may, in its discretion, render  
41 judgment against one or more of them, leaving the action to proceed against the  
42 others, whenever a several judgment is proper.

1 (g) The prevailing party is entitled to the costs of the action, including the costs  
2 of serving the order for the appearance of the defendant.

3 (h) When the court renders judgment, the clerk shall promptly deliver or mail  
4 notice of entry of the judgment to the parties, and shall execute a certificate of  
5 personal delivery or mailing and place it in the file.

6 (i) The notice of entry of judgment shall be on a form approved or adopted by  
7 the Judicial Council.

8 **Comment.** Section 116.610 is amended to correct the reference to the small claims court,  
9 which is colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

10 **Code Civ. Proc. § 116.710 (amended). Right to appeal**

11 SEC. \_\_. Section 116.710 of the Code of Civil Procedure is amended to read:

12 116.710. (a) The plaintiff in a small claims action shall have no right to appeal  
13 the judgment on the plaintiff's claim, but a plaintiff who did not appear at the  
14 hearing may file a motion to vacate the judgment in accordance with Section  
15 116.720.

16 (b) The defendant with respect to the plaintiff's claim, and a plaintiff with  
17 respect to a claim of the defendant, may appeal the judgment by seeking a new  
18 hearing in to the superior court in the county in which the action was heard.

19 (c) With respect to the plaintiff's claim, the insurer of the defendant may appeal  
20 the judgment by seeking a new hearing in to the superior court in the county in  
21 which the matter was heard if the judgment exceeds two thousand five hundred  
22 dollars (\$2,500) and the insurer stipulates that its policy with the defendant covers  
23 the matter to which the judgment applies.

24 (d) A defendant who did not appear at the hearing has no right to appeal the  
25 judgment, but may file a motion to vacate the judgment in accordance with Section  
26 116.730 or 116.740 and also may appeal the denial of that motion.

27 **Comment.** Section 116.710 is amended to make clear that although review of a judgment of  
28 the small claims division is referred to as an appeal, the review actually consists of a new hearing  
29 in the superior court pursuant to Code of Civil Procedure Section 116.770.  
30

☞ **Staff Note.** The phrase "small claims appeal" is used in many provisions, but it is a misnomer because the so-called appeal is actually a retrial. For purposes of the Commission's 1998 bill implementing SCA 4, the approach Professor Kelso has proposed here seems the most expeditious means of addressing the situation. In the long run, however, it may be advisable to globally replace the phrase "small claims appeal" with "small claims retrial." The Commission may want to add this to its list of potential study topics.

31 **Code Civ. Proc. § 116.720 (technical amendment). Failure of plaintiff to appear at hearing**

32 SEC. \_\_. Section 116.720 of the Code of Civil Procedure is amended to read:

33 116.720. (a) A plaintiff who did not appear at the hearing in the small claims  
34 court division may file a motion to vacate the judgment with the clerk of the small  
35 claims court division. The motion shall be filed within 30 days after the clerk has  
36 mailed notice of entry of the judgment to the parties.

1 (b) The clerk shall schedule the hearing on the motion to vacate for a date no  
2 earlier than 10 days after the clerk has mailed written notice of the date, time, and  
3 place of the hearing to the parties.

4 (c) Upon a showing of good cause, the small claims ~~court~~ division may grant the  
5 motion. If the defendant is not present, the court shall hear the motion in the  
6 defendant's absence.

7 (d) If the motion is granted, and if all parties are present and agree, the court may  
8 hear the case without rescheduling it. If the defendant is not present, the judge or  
9 clerk shall reschedule the case and give notice in accordance with Section 116.330.

10 **Comment.** Section 116.720 is amended to correct references to the small claims court, which  
11 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

12 **Code Civ. Proc. § 116.730 (technical amendment). Failure of defendant to appear at hearing**

13 SEC. \_\_. Section 116.730 of the Code of Civil Procedure is amended to read:

14 116.730. (a) A defendant who did not appear at the hearing in the small claims  
15 ~~court~~ division may file a motion to vacate the judgment with the clerk of the small  
16 claims ~~court~~ division. The motion shall be filed within 30 days after the clerk has  
17 mailed notice of entry of the judgment to the parties.

18 (b) The defendant shall appear at any hearing on the motion, or submit written  
19 justification for not appearing together with a declaration in support of the motion.

20 (c) Upon a showing of good cause, the court may grant the motion to vacate the  
21 judgment. If the plaintiff is not present, the court shall hear the motion in the  
22 plaintiff's absence.

23 (d) If the motion is granted, and if all parties are present and agree, the court may  
24 hear the case without rescheduling it. If the plaintiff is not present, the judge or  
25 clerk shall reschedule the case and give notice in accordance with Section 116.330.

26 (e) If the motion is denied, the defendant may appeal to the superior court only  
27 on the denial of the motion to vacate the judgment. The defendant shall file the  
28 notice of appeal with the clerk of the small claims ~~court~~ division within 10 days  
29 after the small claims ~~court~~ division has mailed or delivered notice of the court's  
30 denial of the motion to vacate the judgment.

31 (f) If the superior court determines that the defendant's motion to vacate the  
32 judgment should have been granted, the superior court may hear the claims of all  
33 parties without rescheduling the matter, provided that all parties are present and  
34 the defendant has previously complied with this article, or may order the case  
35 transferred to the small claims ~~court~~ division for a hearing.

36 **Comment.** Section 116.730 is amended to correct references to the small claims court, which  
37 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

38 **Code Civ. Proc. § 116.740 (technical amendment). Defective service on defendant**

39 SEC. \_\_. Section 116.740 of the Code of Civil Procedure is amended to read:

40 116.740. (a) If the defendant was not properly served as required by Section  
41 116.330 or 116.340 and did not appear at the hearing in the small claims ~~court~~  
42 division, the defendant may file a motion to vacate the judgment with the clerk of

1 the small claims court division. The motion shall be accompanied by a supporting  
2 declaration, and shall be filed within 180 days after the defendant discovers or  
3 should have discovered that judgment was entered against the defendant.

4 (b) The court may order that the enforcement of the judgment shall be suspended  
5 pending a hearing and determination of the motion to vacate the judgment.

6 (c) Upon a showing of good cause, the court may grant the motion to vacate the  
7 judgment. If the plaintiff is not present, the court shall hear the motion in the  
8 plaintiff's absence.

9 (d) Subdivisions (d), (e), and (f) of Section 116.730 apply to any motion to  
10 vacate a judgment.

11 **Comment.** Section 116.740 is amended to correct references to the small claims court, which  
12 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

13 **Code Civ. Proc. § 116.750 (technical amendment). Notice of appeal**

14 SEC. \_\_\_. Section 116.750 of the Code of Civil Procedure is amended to read:

15 116.750. (a) An appeal from a judgment in a small claims action is taken by  
16 filing a notice of appeal with the clerk of the small claims court division.

17 (b) A notice of appeal shall be filed not later than 30 days after the clerk has  
18 delivered or mailed notice of entry of the judgment to the parties. A notice of  
19 appeal filed after the 30-day period is ineffective for any purpose.

20 (c) The time for filing a notice of appeal is not extended by the filing of a request  
21 to correct a mistake or by virtue of any subsequent proceedings on that request,  
22 except that a new period for filing notice of appeal shall begin on the delivery or  
23 mailing of notice of entry of any modified judgment.

24 **Comment.** Section 116.750 is amended to correct the reference to the small claims court,  
25 which is colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

26 **Code Civ. Proc. § 116.760 (amended). Filing fee**

27 SEC. \_\_\_. Section 116.760 of the Code of Civil Procedure is amended to read:

28 116.760. (a) The appealing party shall pay the same superior court filing fee that  
29 is required for an appeal of a civil action ~~from a justice or municipal court.~~ to the  
30 appellate division of the superior court.

31 (b) A party who does not appeal shall not be charged any fee for filing any  
32 document in the ~~superior court~~ appeal.

33 **Comment.** Section 116.760 is amended to reflect the elimination of the justice court, and the  
34 authority of the municipal and superior courts in each county to unify their operations in the  
35 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

36 As amended, subdivision (a) provides that a party appealing from a small claims judgment shall  
37 pay the same superior court filing fee as for an appeal to the appellate division of the superior  
38 court. The fee for filing an appeal to the appellate division is specified in Section 26824 of the  
39 Government Code.

40 Subdivision (b) is amended to reflect relocation of the small claims division from the municipal  
41 court to the superior court in a county in which the municipal and superior courts unify their  
42 operations. Because the small claims division is in the same court that hears small claims appeals,  
43 subdivision (b) extends only to documents in the appeal, not to all documents filed in superior  
44 court.

1 **Code Civ. Proc. § 116.770 (amended). Hearing de novo**

2 SEC. \_\_\_. Section 116.770 of the Code of Civil Procedure is amended to read:

3 116.770. (a) The appeal to the superior court shall consist of a new hearing  
4 before a judicial officer other than the judicial officer who presided over the action  
5 in the small claims division.

6 (b) The hearing on an appeal to the superior court shall be conducted informally.  
7 The pretrial discovery procedures described in subdivision (a) of Section 2019 are  
8 not permitted, no party has a right to a trial by jury, and no tentative decision or  
9 statement of decision is required.

10 (c) Article 5 (commencing with Section 116.510) on hearings in the small claims  
11 court division applies in hearings on appeal in the superior court, except that  
12 attorneys may participate.

13 (d) The scope of the hearing shall include the claims of all parties who were  
14 parties to the small claims action at the time the notice of appeal was filed. The  
15 hearing shall include the claim of a defendant which was heard in the small claims  
16 court division.

17 (e) The clerk of the superior court shall schedule the hearing for the earliest  
18 available time and shall mail written notice of the hearing to the parties at least 14  
19 days prior to the time set for the hearing.

20 (f) The Judicial Council may prescribe by rule the practice and procedure on  
21 appeal and the time and manner in which the record on appeal shall be prepared  
22 and filed.

23 **Comment.** Section 116.770 is amended to reflect the elimination of the justice court, and the  
24 authority of the municipal and superior courts in each county to unify their operations in the  
25 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

26 Section 116.770 is also amended to correct references to the small claims court, which are  
27 colloquially acceptable but technically incorrect. See Section 116.210 & Comment.  
28

☞ **Staff Note.** In a non-unified court, a retrial by the superior court is a retrial by a court of higher jurisdiction. In a unified court, perhaps there should be some restriction on who conducts the retrial. Otherwise, the retrial could simply amount to a second opportunity to try the case before a judge of the same court (i.e., a second bite at the same apple and an opportunity for judge shopping).

29  
30 **Code Civ. Proc. § 116.780 (technical amendment). Judgment on appeal**

31 SEC. \_\_\_. Section 116.780 of the Code of Civil Procedure is amended to read:

32 116.780. (a) The judgment of the superior court after a hearing on appeal is final  
33 and not appealable.

34 (b) Article 6 (commencing with Section 116.610) on judgments of the small  
35 claims court division applies to judgments of the superior court after a hearing on  
36 appeal, except as provided in subdivisions (c) and (d).

37 (c) For good cause and where necessary to achieve substantial justice between  
38 the parties, the superior court may award a party to an appeal reimbursement of (1)

1 attorney's fees actually and reasonably incurred in connection with the appeal, not  
2 exceeding one hundred fifty dollars (\$150), and (2) actual loss of earnings and  
3 expenses of transportation and lodging actually and reasonably incurred in  
4 connection with the appeal, not exceeding one hundred fifty dollars (\$150).

5 (d) Upon the expiration of 10 days following the completion of the appeal  
6 process, the superior court shall order the appeal and any judgment transferred to  
7 the small claims ~~court~~ division in which the action was originally filed for  
8 purposes of enforcement and other proceedings under Article 8 (commencing with  
9 Section 116.810) of this chapter.

10 **Comment.** Section 116.780 is amended to correct references to the small claims court, which  
11 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

12 **Code Civ. Proc. § 116.795 (technical amendment). Failure to appear or delayed hearing**

13 SEC. \_\_\_. Section 116.795 of the Code of Civil Procedure is amended to read:

14 116.795. (a) The superior court may dismiss the appeal if the appealing party  
15 does not appear at the hearing or if the appeal is not heard within one year from  
16 the date of filing the notice of appeal with the clerk of the small claims ~~court~~  
17 division.

18 (b) Upon dismissal of an appeal by the superior court, the small claims ~~court~~  
19 division shall thereafter have the same jurisdiction as if no appeal had been filed.

20 **Comment.** Section 116.795 is amended to correct references to the small claims court, which  
21 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

22 **Code Civ. Proc. § 116.810 (technical amendment). Suspension of enforcement during time**  
23 **for appeal**

24 SEC. \_\_\_. Section 116.810 of the Code of Civil Procedure is amended to read:

25 116.810. (a) Enforcement of the judgment of a small claims ~~court~~ division,  
26 including the issuance or recording of any abstract of the judgment, is  
27 automatically suspended, without the filing of a bond by the defendant, until the  
28 expiration of the time for appeal.

29 (b) If an appeal is filed as provided in Article 7 (commencing with Section  
30 116.710), enforcement of the judgment of the small claims ~~court~~ division is  
31 suspended unless (1) the appeal is dismissed by the superior court pursuant to  
32 Section 116.795, or (2) the superior court determines that the small claims ~~court~~  
33 division properly denied the defendant's motion to vacate filed under Section  
34 116.730 or 116.740. In either of those events, the judgment of the small claims  
35 ~~court~~ division may be enforced.

36 (c) The scope of the suspension of enforcement under this section and, unless  
37 otherwise ordered, of any suspension of enforcement ordered by the court, shall  
38 include any enforcement procedure described in Title 9 (commencing with Section  
39 680.010) of Part 2 and in Sections 674 and 1174.

40 **Comment.** Section 116.810 is amended to correct references to the small claims court, which  
41 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

1 **Code Civ. Proc. § 116.820 (technical amendment). Enforcement of judgment**

2 SEC. \_\_. Section 116.820 of the Code of Civil Procedure is amended to read:

3 116.820. (a) The judgment of a small claims ~~court~~ division may be enforced as  
4 provided in Title 9 (commencing with Section 680.010) of Part 2 and in Sections  
5 674 and 1174 on the enforcement of judgments of other courts. A judgment of the  
6 superior court after a hearing on appeal, and after transfer to the small claims ~~court~~  
7 division under subdivision (d) of Section 116.780, may be enforced like other  
8 judgments of the small claims ~~court~~ division, as provided in Title 9 (commencing  
9 with Section 680.010) of Part 2 and in Sections 674 and 1174 on the enforcement  
10 of judgments of other courts.

11 (b) Fees as provided in Sections 26828, 26830, and 26834 of the Government  
12 Code shall be charged and collected by the clerk for the issuance of a writ of  
13 execution, an order of examination of a judgment debtor, or an abstract of  
14 judgment.

15 (c) The prevailing party in any action subject to this chapter is entitled to the  
16 costs of enforcing the judgment and accrued interest.

17 **Comment.** Section 116.820 is amended to correct references to the small claims court, which  
18 are colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

19 **Code Civ. Proc. § 116.840 (technical amendment). Payment to judgment creditor or court**

20 SEC. \_\_. Section 116.840 of the Code of Civil Procedure is amended to read:

21 116.840. (a) At the option of the judgment debtor, payment of the judgment may  
22 be made either (1) to the judgment creditor in accordance with Section 116.850, or  
23 (2) to the court in which the judgment was entered in accordance with Section  
24 116.860.

25 (b) The small claims ~~court~~ division may order entry of satisfaction of judgment  
26 in accordance with subdivisions (c) and (d) of Section 116.850, or subdivision (b)  
27 of Section 116.860.

28 **Comment.** Section 116.840 is amended to correct the reference to the small claims court,  
29 which is colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

30 **Code Civ. Proc. § 116.930 (technical amendment). Information on rules and procedures**

31 SEC. \_\_. Section 116.930 of the Code of Civil Procedure is amended to read:

32 116.930. (a) Each small claims division shall provide in each courtroom in  
33 which small claims actions are heard a current copy of a publication describing  
34 small claims division ~~court~~ law and the procedures that are applicable in the small  
35 claims ~~courts~~ divisions, including the law and procedures that apply to the  
36 enforcement of judgments. The Small Claims Court and Consumer Law California  
37 Judge's Bench Book developed by the California Center for Judicial Education  
38 and Research is illustrative of a publication that satisfies the requirement of this  
39 subdivision.

40 (b) Each small claims division may formulate and distribute to litigants and the  
41 public a manual on small claims ~~court~~ division rules and procedures. The manual  
42 shall explain how to complete the necessary forms, how to determine the proper

1 court in which small claims actions may be filed, how to present and defend  
2 against claims, how to appeal, how to enforce a judgment, how to protect property  
3 that is exempt from execution, and such other matters that the court deems  
4 necessary or desirable.

5 (c) If the Department of Consumer Affairs determines there are sufficient private  
6 or public funds available in addition to the funds available within the department's  
7 current budget, the department, in cooperation with the Judicial Council, shall  
8 prepare a manual or information booklet on small claims court division rules and  
9 procedures. The department shall distribute copies to the general public and to  
10 each small claims division.

11 (d) If funding is available, the Judicial Council, in cooperation with the  
12 Department of Consumer Affairs, shall prepare and distribute to each judge who  
13 sits in a small claims court division a bench book describing all state and federal  
14 consumer protection laws reasonably likely to apply in small claims actions.

15 **Comment.** Section 116.930 is amended to make technical changes, including correction of the  
16 reference to the small claims court, which is colloquially acceptable but technically incorrect. See  
17 Section 116.210 & Comment.

18 **Code Civ. Proc. § 116.940 (technical amendment). Advisory services**

19 SEC. \_\_. Section 116.940 of the Code of Civil Procedure is amended to read:

20 116.940. (a) Except as otherwise provided in this section or in rules adopted by  
21 the Judicial Council, the characteristics of the small claims advisory service  
22 required by Section 116.260 shall be determined by each county in accordance  
23 with local needs and conditions.

24 (b) Each advisory service shall provide the following services:

25 (1) Individual personal advisory services, in person or by telephone, and by any  
26 other means reasonably calculated to provide timely and appropriate assistance.

27 (2) Recorded telephone messages may be used to supplement the individual  
28 personal advisory services, but shall not be the sole means of providing advice  
29 available in the county.

30 (3) Adjacent counties may provide advisory services jointly.

31 (c) In any county in which the number of small claims actions filed annually is  
32 1,000 or less as averaged over the immediately preceding two fiscal years, the  
33 county may elect to exempt itself from the requirements set forth in subdivision  
34 (b). This exemption shall be formally noticed through the adoption of a resolution  
35 by the board of supervisors. If a county so exempts itself, the county shall  
36 nevertheless provide the following minimum advisory services in accordance with  
37 rules adopted by the Judicial Council:

38 (1) Recorded telephone messages providing general information relating to small  
39 claims actions filed in the county shall be provided during regular business hours.

40 (2) Small claims information booklets shall be provided in each ~~municipal and~~  
41 justice court clerk's office, the county administrator's office, other appropriate

1 county offices, and in any other location that is convenient to prospective small  
2 claims litigants in the county.

3 (d) The advisory service shall operate in conjunction and cooperation with the  
4 small claims division, and shall be administered so as to avoid the existence or  
5 appearance of a conflict of interest between the individuals providing the advisory  
6 services and any party to a particular small claims action or any judicial officer  
7 deciding small claims actions.

8 (e) Advisors may be volunteers, and shall be members of the State Bar, law  
9 students, paralegals, or persons experienced in resolving minor disputes, and shall  
10 be familiar with small claims court division rules and procedures. Advisors shall  
11 not appear in court as an advocate for any party.

12 (f) Advisors and other court employees and volunteers have the immunity  
13 conferred by Section 818.9 of the Government Code with respect to advice  
14 provided under this chapter.

15 **Comment.** Section 116.940 is amended to reflect the elimination of the justice court, and the  
16 authority of the municipal and superior courts in each county to unify their operations in the  
17 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

18 Section 116.940 is also amended to correct the reference to the small claims court, which is  
19 colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

20 **Code Civ. Proc. § 116.950 (amended). Advisory committee; operation of section**

21 SEC. \_\_. Section 116.950 of the Code of Civil Procedure is amended to read:

22 116.950. (a) This section shall become operative only if the Department of  
23 Consumer Affairs determines that sufficient private or public funds are available  
24 in addition to the funds available in the department's current budget to cover the  
25 costs of implementing this section.

26 (b) There shall be established an advisory committee, constituted as set forth in  
27 this section, to study small claims practice and procedure, with particular attention  
28 given to the improvement of procedures for the enforcement of judgments.

29 (c) The members of the advisory committee shall serve without compensation,  
30 but shall be reimbursed for expenses actually and necessarily incurred by them in  
31 the performance of their duties. The advisory committee shall report its findings  
32 and recommendations to the Judicial Council and the Legislature.

33 (d) The advisory committee shall be composed as follows:

34 (1) The Attorney General or a representative.

35 (2) Two consumer representatives from consumer groups or agencies, appointed  
36 by the Secretary of the State and Consumer Services Agency.

37 (3) One representative appointed by the Speaker of the Assembly and one  
38 representative appointed by the President pro Tempore of the Senate.

39 (4) Two representatives, appointed by the Board of Governors of the State Bar.

40 (5) Two representatives of the business community, appointed by the Secretary  
41 of the Trade and Commerce Agency.

1 (6) Six judges of the municipal court ~~or justice court~~ or a unified superior court  
2 who have had extensive experience as judges of small claims court actions,  
3 appointed by the Judicial Council.

4 (7) One representative appointed by the Governor.

5 (8) Two clerks of the court, appointed by the Judicial Council.

6 (e) Staff assistance to the advisory committee shall be provided by the  
7 Department of Consumer Affairs, with the assistance of the Judicial Council, as  
8 needed.

9 **Comment.** Section 116.950 is amended to reflect the elimination of the justice court, and the  
10 authority of the municipal and superior courts in each county to unify their operations in the  
11 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

12 Section 116.950 is also amended to correct the reference to the small claims court, which is  
13 colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

14  **Staff Note.** An alternative approach would be to delete the phrase “of the municipal court or justice court” in Section 116.950(c)(6), so that any judge with extensive experience as a small claims judge (including an appellate court justice) could serve on the advisory committee. This would amount to a policy change not necessitated by SCA 4. The Commission has decided against making such policy changes in the course of this study. (See 5/1/97-5/2/97 Minutes at p. 11.) It may be appropriate, however, to include the issue on the Commission’s list of potential study topics.

15 **Code Civ. Proc. § 134 (technical amendment). Court closure on judicial holidays**

16 SEC. \_\_. Section 134 of the Code of Civil Procedure is amended to read:

17 134. (a) Except as provided in subdivision (c), the courts shall be closed for the  
18 transaction of judicial business on judicial holidays for all but the following  
19 purposes:  
20

21 (1) To give, upon their request, instructions to a jury when deliberating on their  
22 verdict.

23 (2) To receive a verdict or discharge a jury.

24 (3) For the conduct of arraignments and the exercise of the powers of a  
25 magistrate in a criminal action, or in a proceeding of a criminal nature.

26 (4) For the conduct of Saturday small claims court division sessions pursuant to  
27 the Small Claims Act set forth in Chapter 5.5 (commencing with Section 116.110).

28 (b) Injunctions and writs of prohibition may be issued and served on any day.

29 (c) In any superior, ~~municipal, or justice court~~, or municipal court, one or more  
30 departments of the court may remain open and in session for the transaction of any  
31 business which may come before the department in the exercise of the civil or  
32 criminal jurisdiction of the court, or both, on a judicial holiday or at any hours of  
33 the day or night, or both, as the judges of the court prescribe.

34 (d) The fact that a court is open on a judicial holiday shall not make that day a  
35 nonholiday for purposes of computing the time required for the conduct of any  
36 proceeding nor for the performance of any act. Any paper lodged with the court at  
37 a time when the court is open pursuant to subdivision (c), shall be filed by the

1 court on the next day which is not a judicial holiday, if the document meets  
2 appropriate criteria for filing.

3 **Comment.** Section 134 is amended to reflect the elimination of the justice court. Cal. Const. art  
4 VI, § 5(b). The amendment also corrects the reference to the small claims court, which is  
5 colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

6 **Code Civ. Proc. § 166 (technical amendment). Judges of municipal and superior courts**

7 SEC. \_\_\_. Section 166 of the Code of Civil Procedure is amended to read:

8 166. (a) The judge or judges of the superior, ~~municipal and justice~~ and municipal  
9 courts may, in chambers, in the matters within the jurisdiction of their respective  
10 courts:

11 (1) Grant all orders and writs which are usually granted in the first instance upon  
12 an ex parte application, and hear and dispose of those orders and writs, appoint  
13 referees, require and receive inventories and accounts to be filed, order notice of  
14 settlement of supplemental accounts, suspend the powers of personal  
15 representatives, guardians, or conservators in the cases allowed by law, appoint  
16 special administrators, grant letters of temporary guardianship or conservatorship,  
17 approve or reject claims, and direct the issuance from the court of all writs and  
18 process necessary in the exercise of their powers in matters of probate.

19 (2) Hear and determine all motions made pursuant to Section 657 or 663.

20 (3) Hear and determine all uncontested actions, proceedings, demurrers,  
21 motions, petitions, applications, and other matters pending before the court other  
22 than actions for dissolution of marriage, for legal separation, or for a judgment of  
23 nullity of the marriage, and except also applications for confirmation of sale of real  
24 property in probate proceedings.

25 (4) Hear and determine motions to tax costs of enforcing a judgment.

26 (5) Approve bonds and undertakings.

27 (b) A judge may, out of court, anywhere in the state, exercise all the powers and  
28 perform all the functions and duties conferred upon a judge as contradistinguished  
29 from the court, or which a judge may exercise or perform in chambers.

30 **Comment.** Section 166 is amended to reflect the elimination of the justice court. Cal. Const. art  
31 VI, § 5(b).

32 **Code Civ. Proc. § 170.5 (technical amendment). Definitions**

33 SEC. \_\_\_. Section 170.5 of the Code of Civil Procedure is amended to read:

34 170.5. For the purposes of Sections 170 to 170.5, inclusive, the following  
35 definitions apply:

36 (a) “Judge” means judges of the ~~justice, municipal,~~ municipal and superior  
37 courts, and court commissioners and referees.

38 (b) “Financial interest” means ownership of more than a 1 percent legal or  
39 equitable interest in a party, or a legal or equitable interest in a party of a fair  
40 market value in excess of one thousand five hundred dollars (\$1,500), or a  
41 relationship as director, advisor or other active participant in the affairs of a party,  
42 except as follows:

1 (1) Ownership in a mutual or common investment fund that holds securities is  
2 not a “financial interest” in those securities unless the judge participates in the  
3 management of the fund.

4 (2) An office in an educational, religious, charitable, fraternal, or civic  
5 organization is not a “financial interest” in securities held by the organization.

6 (3) The proprietary interest of a policyholder in a mutual insurance company, or  
7 a depositor in a mutual savings association, or a similar proprietary interest, is a  
8 “financial interest” in the organization only if the outcome of the proceeding could  
9 substantially affect the value of the interest.

10 (c) “Officer of a public agency” does not include a Member of the Legislature or  
11 a state or local agency official acting in a legislative capacity.

12 (d) The third degree of relationship shall be calculated according to the civil law  
13 system.

14 (e) “Private practice of law” includes a fee for service, retainer, or salaried  
15 representation of private clients or public agencies, but excludes lawyers as full-  
16 time employees of public agencies or lawyers working exclusively for legal aid  
17 offices, public defender offices, or similar nonprofit entities whose clientele is by  
18 law restricted to the indigent.

19 (f) “Proceeding” means the action, case, cause, motion, or special proceeding to  
20 be tried or heard by the judge.

21 (g) “Fiduciary” includes any executor, trustee, guardian, or administrator.

22 **Comment.** Section 170.5 is amended to reflect the elimination of the justice court. Cal. Const.  
23 art VI, § 5(b).

24 **Code Civ. Proc. § 170.6 (technical amendment). Prejudice against party or attorney**

25 SEC. \_\_\_. Section 170.6 of the Code of Civil Procedure is amended to read:

26 170.6. (1) No judge, court commissioner, or referee of any superior, ~~municipal~~  
27 ~~or justice or municipal~~ court of the State of California shall try any civil or  
28 criminal action or special proceeding of any kind or character nor hear any matter  
29 therein which involves a contested issue of law or fact when it shall be established  
30 as hereinafter provided in this section that the judge or court commissioner is  
31 prejudiced against any party or attorney or the interest of any party or attorney  
32 appearing in the action or proceeding.

33 (2) Any party to or any attorney appearing in ~~any such~~ the action or proceeding  
34 may establish this prejudice by an oral or written motion without notice supported  
35 by affidavit or declaration under penalty of perjury or an oral statement under oath  
36 that the judge, court commissioner, or referee before whom the action or  
37 proceeding is pending or to whom it is assigned is prejudiced against ~~any such~~ the  
38 party or attorney or the interest of the party or attorney so that the party or attorney  
39 cannot or believes that ~~he or she~~ the party or attorney cannot have a fair and  
40 impartial trial or hearing before the judge, court commissioner, or referee. Where  
41 the judge, other than a judge assigned to the case for all purposes, court  
42 commissioner, or referee assigned to or who is scheduled to try the cause or hear

1 the matter is known at least 10 days before the date set for trial or hearing, the  
2 motion shall be made at least five days before that date. If directed to the trial of a  
3 cause where there is a master calendar, the motion shall be made to the judge  
4 supervising the master calendar not later than the time the cause is assigned for  
5 trial. If directed to the trial of a cause which has been assigned to a judge for all  
6 purposes, the motion shall be made to the assigned judge or to the presiding judge  
7 by a party within 10 days after notice of the all purpose assignment, or if the party  
8 has not yet appeared in the action, then within 10 days after the appearance. If the  
9 court in which the action is pending is authorized to have no more than one judge  
10 and the motion claims that the duly elected or appointed judge of that court is  
11 prejudiced, the motion shall be made before the expiration of 30 days from the  
12 date of the first appearance in the action of the party who is making the motion or  
13 whose attorney is making the motion. In no event shall any judge, court  
14 commissioner, or referee entertain the motion if it be made after the drawing of the  
15 name of the first juror, or if there be no jury, after the making of an opening  
16 statement by counsel for plaintiff, or if there is no such opening statement, then  
17 after swearing in the first witness or the giving of any evidence or after trial of the  
18 cause has otherwise commenced. If the motion is directed to a hearing (other than  
19 the trial of a cause), the motion shall be made not later than the commencement of  
20 the hearing. In the case of trials or hearings not ~~herein~~ specifically provided for,  
21 the procedure ~~herein~~ specified shall be followed as nearly as may be. The fact that  
22 a judge, court commissioner, or referee has presided at or acted in connection with  
23 a pretrial conference or other hearing, proceeding or motion prior to trial and not  
24 involving a determination of contested fact issues relating to the merits shall not  
25 preclude the later making of the motion provided for ~~herein~~ in this section at the  
26 time and in the manner ~~hereinbefore~~ provided.

27 A motion under this paragraph may be made following reversal on appeal of a  
28 trial court's decision if the trial judge in the prior proceeding is assigned to  
29 conduct a new trial on the matter. The motion shall be made within 60 days after  
30 the party or the party's attorney has been notified of the assignment.

31 (3) If the motion is duly presented and the affidavit or declaration under penalty  
32 of perjury is duly filed or such the oral statement under oath is duly made,  
33 ~~thereupon and then~~ without any further act or proof, the judge supervising the  
34 master calendar, if any, shall assign some other judge, court commissioner, or  
35 referee to try the cause or hear the matter. In other cases, the trial of the cause or  
36 the hearing of the matter shall be assigned or transferred to another judge, court  
37 commissioner, or referee of the court in which the trial or matter is pending or, if  
38 there is no other judge, court commissioner, or referee of the court in which the  
39 trial or matter is pending, the Chairman of the Judicial Council shall assign some  
40 other judge, court commissioner, or referee to try the cause or hear the matter as  
41 promptly as possible. Under no circumstances shall a party or attorney be  
42 permitted to make more than one such motion ~~in any one action or special~~  
43 ~~proceeding pursuant to this section; and in any one action or proceeding.~~ In actions

1 or special proceedings where there may be more than one plaintiff or similar party  
2 or more than one defendant or similar party appearing in the action or special  
3 proceeding, only one motion for each side may be made in any one action or  
4 special proceeding.

5 (4) Unless required for the convenience of the court or unless good cause is  
6 shown, a continuance of the trial or hearing shall not be granted by reason of the  
7 making of a motion under this section. If a continuance is granted, the cause or  
8 matter shall be continued from day to day or for other limited periods upon the  
9 trial or other calendar and shall be reassigned or transferred for trial or hearing as  
10 promptly as possible.

11 (5) Any affidavit filed pursuant to this section shall be in substantially the  
12 following form:

13  
14 (Here set forth court and cause)

15  
16  
17 State of California, ) PEREMPTORY  
18 ) ss. CHALLENGE  
19 County of )

20  
21 \_\_\_\_\_, being duly sworn, deposes and says: That ~~he or she~~ the affiant is  
22 a party (or attorney for a party) to the within action (or special proceeding). That  
23 \_\_\_\_\_ the judge, court commissioner, or referee before whom the trial of  
24 the (or a hearing in the) aforesaid action (or special proceeding) is pending (or to  
25 whom it is assigned), is prejudiced against the party (or ~~his or her~~ the party's  
26 attorney) or the interest of the party (or ~~his or her~~ the party's attorney) so that  
27 affiant cannot or believes that ~~he or she~~ affiant cannot have a fair and impartial  
28 trial or hearing before the judge, court commissioner, or referee.

29  
30 \_\_\_\_\_  
31  
32 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
33 19\_\_\_\_.

34  
35 (Clerk or notary public or other  
36 officer administering oath)

37  
38 (6) Any oral statement under oath or declaration under penalty of perjury made  
39 pursuant to this section shall include substantially the same contents as the  
40 affidavit above.

41 (7) Nothing in this section shall affect or limit the provisions of Section 170 and  
42 Title 4, Part 2, of this code and this section shall be construed as cumulative  
43 thereto to those provisions.

1 (8) If any provision of this section or the application to any person or  
2 circumstance is held invalid, that invalidity shall not affect other provisions or  
3 applications of the section which can be given effect without the invalid provision  
4 or application and to this end the provisions of this section are declared to be  
5 severable.

6 **Comment.** Section 170.6(1) is amended to reflect the elimination of the justice court. Cal.  
7 Const. art VI, § 5(b). Section 170.6 is also amended to make other technical changes.

8 **Code Civ. Proc. § 170.7 (technical amendment). Judge serving on appellate department**

9 SEC. \_\_\_. Section 170.7 of the Code of Civil Procedure is amended to read:

10 170.7. Section 170.6 does not apply to a judge designated or assigned to serve on  
11 the appellate department division of a superior court in his the judge's capacity as  
12 a judge of such ~~department~~ that division.

13 **Comment.** Section 170.7 is amended to make technical changes, including correction of  
14 reference to the appellate department, which are inconsistent with constitutional references to the  
15 appellate division. See Cal. Const. art. VI, § 4.

16 **Code Civ. Proc. § 179 (technical amendment). Taking and certifying acknowledgments,**  
17 **affidavits or depositions**

18 SEC. \_\_\_. Section 179 of the Code of Civil Procedure is amended to read:

19 179. Each of the justices of the Supreme Court and of any court of appeal and  
20 the judges of the superior courts, shall have power in any part of the state, and  
21 every municipal court judge ~~and judge of a justice court~~ shall have power within  
22 the county or city and county in which he the municipal court judge is elected or  
23 appointed, to take and certify:

24 1. The proof and acknowledgment of a conveyance of real property, or of any  
25 other written instrument.

26 2. The acknowledgment of satisfaction of a judgment of any court.

27 3. An affidavit or deposition to be used in this state.

28 **Comment.** Section 179 is amended to reflect the elimination of the justice court. Cal. Const. art  
29 VI, § 5(b).

30 **Code Civ. Proc. § 194 (technical amendment). Definitions**

31 SEC. \_\_\_. Section 194 of the Code of Civil Procedure is amended to read:

32 194. The following definitions govern the construction of this chapter:

33 (a) "County" means any county or any coterminous city and county.

34 (b) "Court" means the superior, ~~municipal,~~ ~~and justice~~ and municipal courts of  
35 this state, and includes, when the context requires, any judge of the court.

36 (c) "Deferred jurors" are those prospective jurors whose request to reschedule  
37 their service to a more convenient time is granted by the jury commissioner.

38 (d) "Excused jurors" are those prospective jurors who are excused from service  
39 by the jury commissioner for valid reasons based on statute, state or local court  
40 rules, and policies.

1 (e) “Juror pool” means the group of prospective qualified jurors appearing for  
2 assignment to trial jury panels.

3 (f) “Jury of inquest” is a body of persons summoned from the citizens before the  
4 sheriff, coroner, or other ministerial officers, to inquire of particular facts.

5 (g) “Master list” means a list of names randomly selected from the source lists.

6 (h) “Potential juror” means any person whose name appears on a source list.

7 (i) “Prospective juror” means a juror whose name appears on the master list.

8 (j) “Qualified juror” means a person who meets the statutory qualifications for  
9 jury service.

10 (k) “Qualified juror list” means a list of qualified jurors.

11 (l) “Random” means that which occurs by mere chance indicating an unplanned  
12 sequence of selection where each juror’s name has substantially equal probability  
13 of being selected.

14 (m) “Source list” means a list used as a source of potential jurors.

15 (n) “Summons list” means a list of prospective or qualified jurors who are  
16 summoned to appear or to be available for jury service.

17 (o) “Trial jurors” are those jurors sworn to try and determine by verdict a  
18 question of fact.

19 (p) “Trial jury” means a body of persons selected from the citizens of the area  
20 served by the court and sworn to try and determine by verdict a question of fact.

21 (q) “Trial jury panel” means a group of prospective jurors assigned to a  
22 courtroom for the purpose of voir dire.

23 **Comment.** Section 194(b) is amended to reflect the elimination of the justice court. Cal. Const.  
24 art VI, § 5(b).

25 **Code Civ. Proc. § 195 (technical amendment). Jury commissioners**

26 SEC. \_\_. Section 195 of the Code of Civil Procedure is amended to read:

27 195. (a) In each county, there shall be one jury commissioner who shall be  
28 appointed by, and serve at the pleasure of, a majority of the judges of the superior  
29 court. In any county where there is a superior court administrator or executive  
30 officer, that person shall serve as ex officio jury commissioner. The person so  
31 appointed shall serve as jury commissioner for all trial courts within the county. In  
32 any municipal or justice court district in the county, a majority of the judges may  
33 appoint the clerk/administrator to select jurors for their court pursuant to this  
34 chapter. In any court jurisdiction where any person other than a court administrator  
35 or clerk/administrator is serving as jury commissioner on the effective date of this  
36 section, that person shall continue to so serve at the pleasure of a majority or the  
37 judges of the appointing court.

38 (b) Except where the superior court administrator or executive officer serves as  
39 ex officio jury commissioner, the jury commissioner’s salary shall be set by joint  
40 action of the board of supervisors and a majority of the superior court judges. Any  
41 jury commissioner may, whenever the business of court requires, and with consent  
42 of the board of supervisors, appoint deputy jury commissioners. Salaries and

1 benefits of such the deputies shall be fixed in the same manner as salaries and  
2 benefits of other court employees.

3 (c) The jury commissioner shall be primarily responsible for managing the jury  
4 system under the general supervision of the court in conformance with the purpose  
5 and scope of this act. ~~He or she~~ The jury commissioner shall have authority to  
6 establish policies and procedures necessary to fulfill this responsibility.

7 **Comment.** Section 195 is amended to reflect the elimination of the justice court. Cal. Const. art  
8 VI, § 5(b). Section 195 is also amended to make other technical changes.  
9

 **Staff Note.** The last sentence of subdivision (a) may be obsolete. The Judicial Council may be able to clarify this point.

10  
11 **Code Civ. Proc. § 199.2 (amended). Placer County jurors**

12 SEC. \_\_. Section 199.2 of the Code of Civil Procedure is amended to read:

13 199.2 (a) ~~In Placer County~~ Except as otherwise provided by statute, if the  
14 municipal and superior courts in Placer County unify, prospective jurors residing  
15 in what was formerly the Tahoe Division of the Placer County Municipal Court,  
16 shall only be included in trial court venires for sessions of the superior court held  
17 within that area.

18 (b) Except as otherwise provided by statute, if the municipal and superior courts  
19 in Placer County do not unify, prospective jurors residing in the Tahoe Division of  
20 the Placer County Municipal Court, ~~except as otherwise provided in this section~~  
21 subdivision (e), shall only be included in trial court venires for sessions of the  
22 superior court held within that division. However,

23 (c) ~~each~~ Each prospective juror residing in ~~the county~~ Placer County shall be  
24 given the opportunity to elect to serve on juries with respect to trials held  
25 anywhere in the county in accordance with the rules of the superior court, which  
26 shall afford to each eligible resident of the county an opportunity for selection as a  
27 trial jury venireman. Additionally, nothing in this section shall preclude the  
28 superior or municipal court, in its discretion, from ordering a countywide venire in  
29 the interest of justice.

30 **Comment.** Section 199.2 is amended to reflect the elimination of the justice court, and the  
31 authority of the municipal and superior courts in each county to unify their operations in the  
32 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.  
33

☞ **Staff Note.** Some of the provisions in the Code of Civil Procedure refer to judicial districts. See, e.g., Code Civ. Proc. §§ 116.250 (location of court sessions), 199.2 (jury selection), 199.3 (same). Trial court unification will eliminate the municipal and justice courts and their judicial districts. Although the term “judicial district” is sometimes also used in the context of superior court, see Article 4 (commencing with Section 69640) of Chapter 5 of Title 8 of the Government Code, only the superior court in Los Angeles County is subdivided into “districts,” as opposed to “branches,” see 2 B. Witkin, *California Procedure Courts* §174, at 200 (3d ed. 1985); Memorandum 93-70 at 1. Thus, the statutory references to judicial districts will be meaningless in counties that elect to unify.

One approach to this situation would be to statutorily refer to former judicial districts, as in the proposed amendment of Section 199.2. Another approach would be to (1) retain the references to judicial districts for non-unified counties, (2) omit the references for unified counties, and (3) not attempt to provide any substitute in unified counties. See, e.g., the proposed amendments of Section 116.250 (court sessions). Under this approach, the proximity advantages of subdividing a county for venue purposes or other purposes would be lost in counties that unify their trial courts. That problem could perhaps be remedied by allowing unified courts to adopt local rules similar to the statutory rule for non-unified courts. Different approaches may work best in different contexts. The staff is still examining some of the provisions referring to judicial districts and determining whether revisions are necessary. Here, the underlying statutory policy is to avoid inconveniencing jurors. Revising Section 199.2 to refer to the former judicial district (if unification occurs) seems the surest means of preserving that policy.

1  
2 **Code Civ. Proc. § 199.3 (amended). Nevada County jurors**

3 SEC. \_\_. Section 199.3 of the Code of Civil Procedure is amended to read:

4 (a) In Nevada County, Except as otherwise provided by statute, if the municipal  
5 and superior courts in Nevada County unify, during the months of November,  
6 December, January, and February, prospective jurors residing in what was  
7 formerly the Truckee Division of the Nevada County Municipal Court, shall only  
8 be included in trial court venires for sessions of the superior court held within that  
9 area.

10 (b) Except as otherwise provided by statute, if the municipal and superior courts  
11 in Nevada County do not unify, during the months of November, December,  
12 January, and February, prospective jurors residing in the Truckee Division of the  
13 Nevada County Municipal Court, except as otherwise provided in this section,  
14 shall only be included in trial court venires of divisions of the superior court  
15 located within the Truckee Division of the Nevada County Municipal Court during  
16 the months of November, December, January, and February. However, each

17 (c) Each prospective juror residing in the Truckee Division of the Nevada  
18 County Municipal Court Nevada County shall be given the opportunity to elect to  
19 serve on juries with respect to trials at other locations during those months held  
20 anywhere in the county in accordance with the rules of the superior court, which  
21 shall afford to each eligible resident of the county an opportunity for selection as a  
22 trial jury venireman. Additionally, nothing in this section shall preclude the

1 superior court, in its discretion, from ordering a countywide venire in the interest  
2 of justice during any time of the year.

3 **Comment.** Section 199.3 is amended to reflect the elimination of the justice court, and the  
4 authority of the municipal and superior courts in each county to unify their operations in the  
5 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.  
6

☞ **Staff Note.** See the Staff Note on Section 199.2 (references to judicial districts).

7 **Code Civ. Proc. § 200 (amended). Alameda County jurors**

8 SEC. \_\_\_. Section 200 of the Code of Civil Procedure is amended to read:

9 200. Except in Alameda County, when authorized by local superior court rules, a  
10 municipal ~~or justice~~ court district pursuant to duly adopted court rule may use the  
11 same juror pool as that summoned for use in the superior court. Persons so  
12 selected for jury service in those municipal ~~or justice~~ courts need not be residents  
13 of the judicial district. ~~In Los Angeles County, the municipal courts~~ If the  
14 municipal and superior courts in Los Angeles County do not unify, the municipal  
15 courts in that county shall use the same jury pool as that summoned for use in the  
16 superior court.

17 **Comment.** Section 200 is amended to reflect the elimination of the justice court, and the  
18 authority of the municipal and superior courts in each county to unify their operations in the  
19 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

20 **Code Civ. Proc. § 215 (technical amendment). Fees and mileage for jurors**

21 SEC. \_\_\_. Section 215 of the Code of Civil Procedure is amended to read:

22 215. Unless a higher fee is provided for each day's attendance by county or city  
23 and county ordinance, the fee for jurors in the superior, ~~municipal, and justice~~ and  
24 municipal courts, in civil and criminal cases, is five dollars (\$5) a day for each  
25 day's attendance as a juror. Unless a higher rate of mileage is otherwise provided  
26 by statute or by county or city and county ordinance, jurors in the superior,  
27 ~~municipal, and justice~~ and municipal courts shall be reimbursed for mileage at the  
28 rate of fifteen cents (\$0.15) per mile for each mile actually traveled in attending  
29 court as a juror, in going only.

30 (b) In criminal cases, the board of supervisors of each county shall make  
31 sufficient appropriations for the payment of the fees provided for in this section.

32 **Comment.** Section 215 is amended to reflect the elimination of the justice court. Cal. Const. art  
33 VI, § 5(b).

34 **Code Civ. Proc. § 217 (technical amendment). Jurors in criminal cases**

35 SEC. \_\_\_. Section 217 of the Code of Civil Procedure is amended to read:

36 217. In criminal cases only, while the jury is kept together, either during the  
37 progress of the trial or after their retirement for deliberation, the court may direct  
38 the sheriff or marshal to provide the jury with suitable and sufficient food and

1 lodging, or other reasonable necessities. In the superior, ~~municipal, and justice and~~  
2 municipal courts, the expenses incurred under the provisions of this section shall  
3 be charged against the county or city and county in which the court is held. All  
4 those expenses shall be paid on the order of the court.

5 **Comment.** Section 217 is amended to reflect the elimination of the justice court. Cal. Const. art  
6 VI, § 5(b).

7 **Code Civ. Proc. § 221 (repealed). Experimental eight person juries**

8 221. (a) ~~A trial jury in civil actions in municipal and justice courts may consist~~  
9 ~~of eight persons in the County of Los Angeles, pursuant to rules adopted by the~~  
10 ~~Judicial Council, as an experimental project operative until July 1, 1989.~~

11 ~~(b) The Judicial Council shall appoint an advisory committee which shall~~  
12 ~~include at least one judge of each court or courts in which the project will take~~  
13 ~~place, one court administrator from that court or courts, or his or her designee, and~~  
14 ~~one member of the Los Angeles County Bar Association, Trial Lawyers Section,~~  
15 ~~who practices in the municipal or justice courts, to make recommendations~~  
16 ~~regarding the design of the eight-person jury experiment. The Judicial Council~~  
17 ~~shall adopt rules for the implementation of the project, including rules governing~~  
18 ~~the assignment of cases to eight person juries during the experimental period, and~~  
19 ~~establish procedures for the collection and evaluation of data.~~

20 ~~(c) The Judicial Council shall report to the Legislature no later than January 1,~~  
21 ~~1990, comparing the performance of eight and 12 person juries. The comparison~~  
22 ~~shall include, but not be limited to, the following factors:~~

- 23 ~~(1) Cross-sectional representation of the community.~~  
24 ~~(2) Numbers of verdicts favoring plaintiffs or defendants, and size of awards.~~  
25 ~~(3) Accuracy, consistency, and reliability of awards.~~  
26 ~~(4) Time required for impanelment, trial, and deliberations.~~  
27 ~~(5) Public and private costs of the jury.~~

28 ~~(d) Notwithstanding the provisions of Section 206, the project courts shall~~  
29 ~~collect and provide to the Judicial Council the data required for a proper~~  
30 ~~evaluation of the experiment. Any bona fide researcher or research organization~~  
31 ~~shall be permitted access to any data regarding the conduct or evaluation of the~~  
32 ~~pilot project.~~

33 **Comment.** Section 221 is repealed as obsolete.

34 **Code Civ. Proc. § 234 (technical amendment). Alternate jurors**

35 SEC. \_\_. Section 234 of the Code of Civil Procedure is amended to read:

36 234. Whenever, in the opinion of a judge of a superior, ~~municipal, or justice or~~  
37 municipal court about to try a civil or criminal action or proceeding, the trial is  
38 likely to be a protracted one, or upon stipulation of the parties, the court may cause  
39 an entry to that effect to be made in the minutes of the court and thereupon,  
40 immediately after the jury is impaneled and sworn, the court may direct the calling

1 of one or more additional jurors, in its discretion, to be known as “alternate  
2 jurors.”

3 These alternate jurors shall be drawn from the same source, and in the same  
4 manner, and have the same qualifications, as the jurors already sworn, and shall be  
5 subject to the same examination and challenges. However, each side, or each  
6 defendant, as provided in Section 231, shall be entitled to as many peremptory  
7 challenges to the alternate jurors as there are alternate jurors called.

8 The alternate jurors shall be seated so as to have equal power and facilities for  
9 seeing and hearing the proceedings in the case, and shall take the same oath as the  
10 jurors already selected, and shall, unless excused by the court, attend at all times  
11 upon the trial of the cause in company with the other jurors, but shall not  
12 participate in deliberation unless ordered by the court, and for a failure to do so are  
13 liable to be punished for contempt.

14 They shall obey the orders of and be bound by the admonition of the court, upon  
15 each adjournment of the court; but if the regular jurors are ordered to be kept in the  
16 custody of the sheriff or marshal during the trial of the cause, the alternate jurors  
17 shall also be kept in confinement with the other jurors; and upon final submission  
18 of the case to the jury, the alternate jurors shall be kept in the custody of the sheriff  
19 or marshal who shall not suffer any communication to be made to them except by  
20 order of the court, and shall not be discharged until the original jurors are  
21 discharged, except as provided in this section.

22 If at any time, whether before or after the final submission of the case to the jury,  
23 a juror dies or becomes ill, or upon other good cause shown to the court is found to  
24 be unable to perform ~~his or her~~ the juror’s duty, or if a juror requests a discharge  
25 and good cause appears ~~therefor~~, the court may order the juror to be discharged  
26 and draw the name of an alternate, who shall then take ~~his or her~~ the discharged  
27 juror’s place in the jury box, and be subject to the same rules and regulations as  
28 though ~~he or she has~~ the alternate juror had been selected as one of the original  
29 jurors.

30 All laws relative to fees, expenses, and mileage or transportation of jurors shall  
31 be applicable to alternate jurors, except that in civil cases the sums for fees and  
32 mileage or transportation need not be deposited until the judge directs alternate  
33 jurors to be impaneled.

34 **Comment.** Section 234 is amended to reflect the elimination of the justice court. Cal. Const. art  
35 VI, § 5(b). Section 234 is also amended to make other technical changes.

36 **Code Civ. Proc. § 274c (technical amendment). Official reporters of municipal courts**

37 SEC. \_\_\_. Section 274c of the Code of Civil Procedure is amended to read:

38 274c. Official reporters of a municipal ~~or justice~~ court, or any one of them, must,  
39 at the request of either party or of the court in a civil proceeding, or on the order of  
40 the court in a criminal action or proceeding, take down in shorthand all the  
41 testimony, the objections made, the rulings of the court, the exceptions taken, all  
42 arraignments, pleas and sentences of defendants in criminal cases, the arguments

1 of the prosecuting attorney to the jury, and all statements and remarks made and  
2 oral instructions given by the judge; and if directed by the court, or requested by  
3 either party, must, within ~~such~~ whatever reasonable time after the trial of ~~such~~ the  
4 case as the court may designate, write out the same, or ~~such~~ specific portions  
5 thereof as may be requested, in plain and legible longhand, or by typewriter, or  
6 other printing machine, and certify to the same as being correctly reported and  
7 transcribed, and when directed by the court, file the same with the clerk of the  
8 court.

9 **Comment.** Section 274c is amended to reflect the elimination of the justice court. Cal. Const.  
10 art VI, § 5(b). Section 274c is also amended to make other technical changes.

11  **Staff Note.** Professor Kelso urges the Commission to defer consideration of this section,  
because the Judicial Council's SCA 4 committee is seeking information about how to handle  
the Code of Civil Procedure sections governing court reporters.

12 **Code Civ. Proc. § 391 (technical amendment). Definitions**

13 SEC. \_\_. Section 391 of the Code of Civil Procedure is amended to read:

14 391. As used in this title, the following terms have the following meanings:

15 (a) "Litigation" means any civil action or proceeding, commenced, maintained  
16 or pending in any state or federal court.

17 (b) "Vexatious litigant" means a person who does any of the following:

18 (1) In the immediately preceding seven-year period has commenced, prosecuted,  
19 or maintained in propria persona at least five litigations other than in a small  
20 claims court division that have been (i) finally determined adversely to the person  
21 or (ii) unjustifiably permitted to remain pending at least two years without having  
22 been brought to trial or hearing.

23 (2) After a litigation has been finally determined against the person, repeatedly  
24 relitigates or attempts to relitigate, in propria persona, either (i) the validity of the  
25 determination against the same defendant or defendants as to whom the litigation  
26 was finally determined or (ii) the cause of action, claim, controversy, or any of the  
27 issues of fact or law, determined or concluded by the final determination against  
28 the same defendant or defendants as to whom the litigation was finally determined.

29 (3) In any litigation while acting in propria persona, repeatedly files  
30 unmeritorious motions, pleadings, or other papers, conducts unnecessary  
31 discovery, or engages in other tactics that are frivolous or solely intended to cause  
32 unnecessary delay.

33 (4) Has previously been declared to be a vexatious litigant by any state or federal  
34 court of record in any action or proceeding based upon the same or substantially  
35 similar facts, transaction, or occurrence.

36 (c) "Security" means an undertaking to assure payment, to the party for whose  
37 benefit the undertaking is required to be furnished, of the party's reasonable  
38 expenses, including attorney's fees and not limited to taxable costs, incurred in or

1 in connection with a litigation instituted, caused to be instituted, or maintained or  
2 caused to be maintained by a vexatious litigant.

3 (d) “Plaintiff” means the person who commences, institutes or maintains a  
4 litigation or causes it to be commenced, instituted or maintained, including an  
5 attorney at law acting in propria persona.

6 (e) “Defendant” means a person (including corporation, association, partnership  
7 and firm or governmental entity) against whom a litigation is brought or  
8 maintained or sought to be brought or maintained.

9 **Comment.** Section 391 is amended to correct the reference to the small claims court, which is  
10 colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

11 **Code Civ. Proc. § 392 (amended). Real property actions**

12 SEC. \_\_. Section 392 of the Code of Civil Procedure is amended to read:

13 392. (1) (a) Subject to the power of the court to transfer actions and proceedings  
14 as provided in this title, the county in which the real property, which is the subject  
15 of the action, or some part thereof of the real property, is situated, is the proper  
16 county for the trial of the following actions:

17 (a) (1) For the recovery of real property, or of an estate or interest ~~therein~~ in the  
18 real property, or for the determination in any form, of ~~such right or interest~~ a right  
19 or interest in real property , and for injuries to real property;

20 (b) (2) For the foreclosure of all liens and mortgages on real property.

21 (2) (b) The proper court for the trial of any ~~such~~ action included in subdivision  
22 (a), in the county ~~hereinabove~~ designated as the proper county, shall be determined  
23 as follows: If there is a municipal ~~or justice~~ court, having jurisdiction of the  
24 subject matter of the action, established in the city and county or judicial district in  
25 which the real property which is the subject of the action, or some part thereof of  
26 that property, is situated, ~~such~~ that court is the proper court for the trial of ~~such~~ the  
27 action; otherwise any court in ~~such~~ the county having jurisdiction of the subject  
28 matter of the action, is a proper court for the trial thereof.

29 **Comment.** Section 392 is amended to reflect the elimination of the justice court. Cal. Const. art  
30 VI, § 5(b). Section 392 is also amended to make other technical changes.

31 **Code Civ. Proc. § 393 (amended). Action for penalty or forfeiture or against public officer**

32 SEC. \_\_. Section 393 of the Code of Civil Procedure is amended to read:

33 393. (1) (a) Subject to the power of the court to transfer actions and proceedings  
34 as provided in this title, the county in which the cause, or some part thereof of the  
35 cause, arose, is the proper county for the trial of the following actions:

36 (a) (1) For the recovery of a penalty or forfeiture imposed by statute; except, that  
37 when it is imposed for an offense committed on a lake, river, or other stream of  
38 water, situated in two or more counties, the action may be tried in any county  
39 bordering on ~~such~~ the lake, river, or stream, and opposite to the place where the  
40 offense was committed;

41 (b) (2) Against a public officer or person especially appointed to execute his  
42 duties the duties of a public officer, for an act done by ~~him~~ that person in virtue of

1 his the office; or against a person who, by his command or in his aid, does  
2 anything touching the duties of such a public officer.

3 (2) (b) The proper court for the trial of any such action included in subdivision  
4 (a), in the county hereinabove designated as the proper county, shall be determined  
5 as follows: If there is a municipal ~~or justice~~ court, having jurisdiction of the  
6 subject matter of the action, established in the city and county or judicial district in  
7 which the cause, or some part ~~thereof~~ of the cause, arose, such that court is the  
8 proper court for the trial of such the action; otherwise, any court in such the  
9 county, having jurisdiction of the subject matter of the action, is a proper court for  
10 the trial thereof. In the case of offenses committed on a lake, river, or stream,  
11 ~~hereinabove mentioned~~, the court, having jurisdiction of the subject matter of the  
12 action, nearest to the place where such the offense was committed, in any county  
13 mentioned in subdivision ~~1 of this section~~, (a), is a proper court for the trial of the  
14 action.

15 **Comment.** Section 393 is amended to reflect the elimination of the justice court. Cal. Const. art  
16 VI, § 5(b). Section 393 is also amended to make other technical changes.

17 **Code Civ. Proc. § 395 (amended). Actions generally**

18 SEC. \_\_. Section 395 of the Code of Civil Procedure is amended to read:

19 395. (a) Except as otherwise provided by law and subject to the power of the  
20 court to transfer actions or proceedings as provided in this title, the county in  
21 which the defendants or some of them reside at the commencement of the action is  
22 the proper county for the trial of the action. If the action is for injury to person or  
23 personal property or for death from wrongful act or negligence, either the county  
24 where the injury occurs or the injury causing death occurs or the county in which  
25 the defendants, or some of them reside at the commencement of the action, shall  
26 be a proper county for the trial of the action. In a proceeding for dissolution of  
27 marriage, the county in which either the petitioner or respondent has been a  
28 resident for three months next preceding the commencement of the proceeding is  
29 the proper county for the trial of the proceeding. In a proceeding for nullity of  
30 marriage or legal separation of the parties, the county in which either the petitioner  
31 or the respondent resides at the commencement of the proceeding is the proper  
32 county for the trial of the proceeding. In a proceeding to enforce an obligation of  
33 support under Section 3900 of the Family Code, the county in which the child  
34 resides is the proper county for the trial of the action. In a proceeding to establish  
35 and enforce a foreign judgment or court order for the support of a minor child, the  
36 county in which the child resides is the proper county for the trial of the action.  
37 Subject to subdivision (b), when a defendant has contracted to perform an  
38 obligation in a particular county, either the county where the obligation is to be  
39 performed or in which the contract in fact was entered into or the county in which  
40 the defendant or any such defendant resides at the commencement of the action  
41 shall be a proper county for the trial of an action founded on that obligation, and  
42 the county in which the obligation is incurred shall be deemed to be the county in

1 which it is to be performed unless there is a special contract in writing to the  
2 contrary. If none of the defendants reside in the state or if residing in the state and  
3 the county in which they reside is unknown to the plaintiff, the action may be tried  
4 in any county which the plaintiff may designate in ~~his or her~~ the complaint, and, if  
5 the defendant is about to depart from the state, the action may be tried in any  
6 county where either of the parties reside or service is made. If any person is  
7 improperly joined as a defendant or has been made a defendant solely for the  
8 purpose of having the action tried in the county or judicial district where ~~he or she~~  
9 the person resides, ~~his or her~~ that person's residence shall not be considered in  
10 determining the proper place for the trial of the action.

11 (b) Subject to the power of the court to transfer actions or proceedings as  
12 provided in this title, in an action arising from an offer or provision of goods,  
13 services, loans or extensions of credit intended primarily for personal, family or  
14 household use, other than an obligation described in Section 1812.10 or Section  
15 2984.4 of the Civil Code, or an action arising from a transaction consummated as a  
16 proximate result of an unsolicited telephone call made by a seller engaged in the  
17 business of consummating transactions of that kind, the county in which the buyer  
18 or lessee in fact signed the contract, the county in which the buyer or lessee  
19 resided at the time the contract was entered into, or the county in which the buyer  
20 or lessee resides at the commencement of the action is the proper county for the  
21 trial thereof.

22 (c) If within the county there is a municipal ~~or justice~~ court having jurisdiction of  
23 the subject matter established, in the cases mentioned in subdivision (a), in the  
24 judicial district in which the defendant or any defendant resides, in which the  
25 injury to person or personal property or the injury causing death occurs, or, in  
26 which the obligation was contracted to be performed or, in cases mentioned in  
27 subdivision (b), in the judicial district which the buyer or lessee resides, in which  
28 the buyer or lessee in fact signed the contract, in which the buyer or lessee resided  
29 at the time the contract was entered into, or in which the buyer or lessee resides at  
30 the commencement of the action, then that court is the proper court for the trial of  
31 the action. Otherwise, any municipal ~~or justice~~ court in the county having  
32 jurisdiction of the subject matter is a proper court for the trial thereof.

33 (d) Any provision of an obligation described in subdivision (b) or (c) waiving  
34 those subdivisions is void and unenforceable.

35 **Comment.** Section 395 is amended to reflect the elimination of the justice court. Cal. Const. art  
36 VI, § 5(b). Section 395 is also amended to make other technical changes.

37 **Code Civ. Proc. § 396 (technical amendment). Court without jurisdiction**

38 SEC. \_\_\_. Section 396 of the Code of Civil Procedure is amended to read:

39 396. If an action or proceeding is commenced in a court which lacks jurisdiction  
40 of the subject matter thereof, as determined by the complaint or petition, if there is  
41 a court of this state which has ~~such~~ jurisdiction, the action or proceeding shall not  
42 be dismissed (except as provided in Section 399, and subdivision 1 of Section 581)

1 but shall, on the application of either party, or on the court's own motion, be  
2 transferred to a court having jurisdiction of the subject matter which may be  
3 agreed upon by the parties, or, if they do not agree, to a court having such  
4 jurisdiction which is designated by law as a proper court for the trial or  
5 determination thereof, and it shall thereupon be entered and prosecuted in the court  
6 to which it is transferred as if it had been commenced therein in that court, all prior  
7 proceedings being saved. ~~In any such case, if~~ If summons is served prior to the  
8 filing of the action or proceeding in the court to which it is transferred, as to any  
9 defendant, so served, who has not appeared in the action or proceeding, the time to  
10 answer or otherwise plead shall date from service upon ~~such~~ the defendant of  
11 written notice of filing of ~~such~~ the action or proceeding in the court to which it is  
12 transferred.

13 If an action or proceeding is commenced in or transferred to a court which has  
14 jurisdiction of the subject matter thereof as determined by the complaint or  
15 petition, and it thereafter appears from the verified pleadings, or at the trial, or  
16 hearing, that the determination of the action or proceeding, or of a cross-  
17 complaint, will necessarily involve the determination of questions not within the  
18 jurisdiction of the court, in which the action or proceeding is pending, the court,  
19 whenever ~~such~~ a lack of jurisdiction appears, must suspend all further proceedings  
20 therein and transfer the action or proceeding and certify the pleadings (or if the  
21 pleadings be oral, a transcript of the same), and all papers and proceedings therein  
22 to a court having jurisdiction thereof which may be agreed upon by the parties, or,  
23 if they do not agree, to a court having such jurisdiction which is designated by law  
24 as a proper court for the trial or determination thereof.

25 An action or proceeding which is transferred under the provisions of this section  
26 shall be deemed to have been commenced at the time the complaint or petition was  
27 filed in the court from which it was originally transferred.

28 Nothing herein in this section shall be construed to preclude or affect the right to  
29 amend the pleadings as provided in this code.

30 Nothing herein in this section shall be construed to require the superior court to  
31 transfer any action or proceeding because the judgment to be rendered, as  
32 determined at the trial or hearing, is one which might have been rendered by a  
33 municipal ~~or justice~~ court in the same county or city and county.

34 In any case where the lack of jurisdiction is due solely to an excess in the  
35 amount of the demand, the excess may be remitted and the action may continue in  
36 the court where it is pending.

37 Upon the making of an order for ~~such~~ transfer, proceedings shall be had as  
38 provided in Section 399 of this code, the costs and fees ~~thereof~~ of those  
39 proceedings, and of filing the case in the court to which transferred, to be paid by  
40 the party filing the pleading in which the question outside the jurisdiction of the  
41 court appears unless the court ordering the transfer shall otherwise direct.

42 **Comment.** Section 396 is amended to reflect the elimination of the justice court. Cal. Const. art  
43 VI, § 5(b). Section 396 is also amended to make other technical changes.

1 • **Code Civ. Proc. § 396a (amended). Statement of jurisdictional facts**

2 SEC. \_\_. Section 396a of the Code of Civil Procedure is amended to read:

3 396a. ~~In all actions and proceedings commenced in a justice or municipal court~~  
4 ~~which are~~ In any beta matter which is subject to the provisions of Sections 1812.10  
5 ~~and Section 1812.10 or 2984.4~~ of the Civil Code, or subdivision (b) of Section 395  
6 of the Code of Civil Procedure, or is an action or proceeding for an unlawful  
7 detainer as defined in Section 1161 of the Code of Civil Procedure, plaintiff shall  
8 state facts in the complaint, verified by his plaintiff's oath, or the oath of his  
9 plaintiff's attorney, or in an affidavit of the plaintiff or of his plaintiff's attorney  
10 filed with the complaint, showing that the action has been commenced in the  
11 proper court for the trial ~~of such action or proceeding~~, and showing that the action  
12 is subject to the provisions of ~~Sections 1812.10 and~~ Section 1812.10 or 2984.4 of  
13 the Civil Code or subdivision (b) of Section 395 of the Code of Civil Procedure, or  
14 is an action for an unlawful detainer. When ~~such an~~ affidavit is filed with the  
15 complaint, a copy ~~thereof~~ of the affidavit must be served with the summons.  
16 Except as ~~herein~~ provided in this section, if ~~such the~~ complaint or affidavit be not  
17 so filed, no further proceedings shall be had in the action or proceeding, except to  
18 dismiss the same without prejudice. However, the court may, on ~~such terms as~~  
19 ~~may be~~ terms that are just, permit ~~such the~~ affidavit to be filed subsequent to the  
20 filing of the complaint, and a copy of ~~such the~~ affidavit shall be served on the  
21 defendant and the time to answer or otherwise plead shall date from ~~such the~~  
22 service. If it appears from ~~such the~~ complaint or affidavit, or otherwise, that the  
23 court in which ~~such the~~ action or proceeding is commenced is not the proper court  
24 for the trial ~~thereof~~, the court in which ~~such the~~ action or proceeding is  
25 commenced, or a judge ~~thereof~~ of that court, shall, whenever ~~such that~~ fact  
26 appears, transfer it to ~~such the~~ proper court, on its own motion, or on motion of the  
27 defendant, unless the defendant consents in writing, or in open court (~~such consent~~  
28 in open court being entered in the minutes or docket of the court), to the keeping  
29 of the action or proceeding in the court where commenced. If ~~such consent~~ be  
30 given, the action or proceeding may continue in the court where commenced.  
31 Notwithstanding the provisions of Section 1801.1 and subdivision (f) of Section  
32 2983.7 of the Civil Code that consent may be given by a defendant who is  
33 represented by counsel at the time the consent is given, and where an action or  
34 proceeding is subject to the provisions of subdivision (b) of Section 395 of the  
35 Code of Civil Procedure or is for an unlawful detainer, that consent may only be  
36 given by a defendant who is represented by counsel at the time the consent is  
37 given. In any ~~such~~ case where the transfer of the action or proceeding is ordered  
38 under the provisions of this paragraph, if summons is served prior to the filing of  
39 ~~such the~~ action or proceeding in the court to which it is transferred, as to any  
40 defendant, so served, who has not appeared in the action or proceeding, the time to  
41 answer or otherwise plead shall date from service upon ~~such the~~ defendant of  
42 written notice of ~~such the~~ filing.

1 When it appears from such the complaint or affidavit of the plaintiff that the  
2 court in which such the action or proceeding is commenced is a proper court for  
3 the trial thereof, all proper proceedings may be had, and the action or proceeding  
4 may be tried therein in that court; provided, however, that in such the case a  
5 motion for a transfer of the action or proceeding may be made as in other cases,  
6 within the time, upon the grounds, and in the manner provided in this title, and if  
7 upon such the motion it appears that such the action or proceeding is not pending  
8 in the proper court, or should for other cause be transferred, the same shall be  
9 ordered transferred as provided in this title.

10 When any such action or proceeding is ordered transferred as herein provided in  
11 this section, proceedings shall be had, and the costs and fees shall be paid, as  
12 provided in Sections 398 and 399 of this code.

13 **Comment.** Section 396a is amended to reflect the elimination of the justice court, and the  
14 authority of the municipal and superior courts in each county to unify their operations in the  
15 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. Formerly, Section 396a was limited to matters  
16 commenced in a municipal or justice court. Now, such matters are classified as beta matters. See  
17 Section 85 (beta matters) & Comment. To continue the effect of former law, Section 396a is  
18 amended to refer to beta matters,

19 Section 396a is also amended to make technical changes.

20 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
21 matters and beta matters, see Memorandum 97-38.

22 **Code Civ. Proc. § 402 (technical amendment). Transfer for convenience of municipal court**

23 SEC. \_\_. Section 402 of the Code of Civil Procedure is amended to read:

24 402. The presiding judge of a municipal ~~or justice~~ court district, may order, for  
25 the convenience of the court, that any case pending trial be transferred to a  
26 contiguous municipal ~~or justice~~ court district in the same county if the presiding  
27 judge in the district to which the case is proposed to be transferred consents to the  
28 transfer and notice thereof of the transfer is given to the parties or their attorneys at  
29 least 10 days in advance of the date fixed for trial.

30 No fees shall be charged for the transfer of any case pursuant to this section.

31 **Comment.** Section 402 is amended to reflect the elimination of the justice court. Cal. Const. art  
32 VI, § 5(b). Section 402 is also amended to make other technical changes.

33 **Code Civ. Proc. § 422.20 (repealed). Justice court pleadings**

34 SEC. \_\_. Section 422.20 of the Code of Civil Procedure is repealed.

35 ~~422.20. The rules of pleading in justice courts shall be the same as the rules of~~  
36 ~~pleading in municipal courts.~~

37 **Comment.** Section 422.20 is repealed to reflect the elimination of the justice court. Cal. Const.  
38 art VI, § 5(b).

39 **Code Civ. Proc. § 422.30 (technical amendment). Caption**

40 SEC. \_\_. Section 422.30 of the Code of Civil Procedure is amended to read:

41 422.30. Every pleading shall contain a caption setting forth:

1 (a) The name of the court and county, and, in municipal ~~and justice~~ courts, the  
2 name of the judicial district, in which the action is brought; and

3 (b) The title of the action.

4 **Comment.** Section 422.30 is amended to reflect the elimination of the justice court. Cal. Const.  
5 art VI, § 5(b).

6 • **Code Civ. Proc. § 425.10 (amended). Statement of facts**

7 SEC. \_\_. Section 425.10 of the Code of Civil Procedure is amended to read:

8 425.10. A complaint or cross-complaint shall contain ~~both of~~ the following:

9 (a) A statement of the facts constituting the cause of action, in ordinary and  
10 concise language.

11 (b) A demand for judgment for the relief to which the pleader claims ~~he is to be~~  
12 entitled. If the recovery of money or damages be demanded, the amount ~~thereof~~  
13 shall be stated, unless the action is brought in the superior court to recover actual  
14 or punitive damages for personal injury or wrongful death, in which case the  
15 amount ~~thereof~~ shall not be stated.

16 (c) A declaration stating whether the matter is an alpha matter or a beta matter.  
17 In a county with a municipal court, a complaint or cross-complaint filed in the  
18 superior court shall be deemed to include a declaration stating that the matter is an  
19 alpha matter, and a complaint or cross-complaint filed in the municipal court shall  
20 be deemed to include a declaration stating that the matter is a beta matter.

21 **Comment** Section 425.10 is amended to reflect the elimination of the justice court, and the  
22 authority of the municipal and superior courts in each county to unify their operations in the  
23 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

24 Subdivision (c) is added to facilitate differentiation between alpha matters and beta matters,  
25 particularly in a unified superior court. See Sections 83 (alpha matters) & 85 (beta matters) &  
26 Comments. See also Sections 81 (amount in controversy), 82 (alpha causes), 86 (beta causes).

27 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
28 matters and beta matters, see Memorandum 97-38.

29 **Code Civ. Proc. § 426.60 (technical amendment). Application of article**

30 SEC. \_\_. Section 426.60 of the Code of Civil Procedure is amended to read:

31 426.60. (a) This article applies only to civil actions and does not apply to special  
32 proceedings.

33 (b) This article does not apply to actions in the small claims ~~court~~ division.

34 (c) This article does not apply where the only relief sought is a declaration of the  
35 rights and duties of the respective parties in an action for declaratory relief under  
36 Chapter 8 (commencing with Section 1060) of Title 14 of this part.

37 **Comment.** Section 426.60 is amended to correct the reference to the small claims court, which  
38 is colloquially acceptable but technically incorrect. See Section 116.210 & Comment.

39 • **Code Civ. Proc. § 430.10 (amended). Objection to complaint or cross-complaint.**

40 SEC. \_\_. Section 430.10 of the Code of Civil Procedure is amended to read:

1 430.10. The party against whom a complaint or cross-complaint has been filed  
2 may object, by demurrer or answer as provided in Section 430.30, to the pleading  
3 on any one or more of the following grounds:

4 (a) The court has no jurisdiction of the subject of the cause of action alleged in  
5 the pleading.

6 (b) The person who filed the pleading does not have the legal capacity to sue.

7 (c) There is another action pending between the same parties on the same cause  
8 of action.

9 (d) There is a defect or misjoinder of parties.

10 (e) The pleading does not state facts sufficient to constitute a cause of action.

11 (f) The pleading is uncertain. As used in this subdivision, “uncertain” includes  
12 ambiguous and unintelligible.

13 (g) In an action founded upon a contract, it cannot be ascertained from the  
14 pleading whether the contract is written, is oral, or is implied by conduct.

15 (h) No certificate was filed as required by Section 411.35.

16 (i) No certificate was filed as required by Section 411.36.

17 (j) The declaration pursuant to Section 425.10 designating the action as an alpha  
18 matter or a beta matter is erroneous.

19 **Comment.** Section 430.10 is amended to reflect the elimination of the justice court, and the  
20 authority of the municipal and superior courts in each county to unify their operations in the  
21 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

22 See Sections 83 (alpha matters) & 85 (beta matters) & Comments. See also Sections 81  
23 (amount in controversy), 82 (alpha causes), 86 (beta causes).

24 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
25 matters and beta matters, see Memorandum 97-38.

26 • **Code Civ. Proc. § 489.220 (amended). Amount of undertaking**

27 SEC. \_\_. Section 489.220 of the Code of Civil Procedure is amended to read:

28 489.220. (a) Except as provided in subdivision (b), the amount of an undertaking  
29 filed pursuant to this article shall be two thousand five hundred dollars (\$2,500) in  
30 ~~an action in the municipal or justice court a beta matter~~, and seven thousand five  
31 hundred dollars (\$7,500) in ~~an action in the superior court~~ an alpha matter.

32 (b) If, upon objection to the undertaking, the court determines that the probable  
33 recovery for wrongful attachment exceeds the amount of the undertaking, it shall  
34 order the amount of the undertaking increased to the amount it determines to be  
35 the probable recovery for wrongful attachment if it is ultimately determined that  
36 the attachment was wrongful.

37 **Comment.** Section 489.220 is amended to reflect the elimination of the justice court, and the  
38 authority of the municipal and superior courts in each county to unify their operations in the  
39 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. Formerly, each county had one or more  
40 municipal courts and a superior court, and Section 489.220 required an undertaking of \$2,500 for  
41 an action in municipal court and \$7,500 for an action in superior court. See former Cal. Const. art.  
42 VI, § 5 and former Section 489.220. A beta matter is equivalent to an action in municipal court  
43 and an alpha matter is equivalent to an action in a non-unified superior court, so Section 489.220

1 as amended continues the effect of former law. See Sections 82 (alpha causes), 83 (alpha  
2 matters), 85 (beta matters), 86 (beta causes) & Comments.

3 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
4 matters and beta matters, see Memorandum 97-38.

5 **Code Civ. Proc. § 575 (technical amendment). Promulgation of rules by Judicial Council**

6 SEC. \_\_\_. Section 575 of the Code of Civil Procedure is amended to read:

7 575. The Judicial Council may promulgate rules governing pretrial conferences,  
8 and the time, manner and nature ~~thereof~~ of pretrial conferences, in civil cases at  
9 issue, or in one or more classes ~~thereof~~ of civil cases at issue, in the ~~superior,~~  
10 ~~municipal, and justice courts~~ superior and municipal courts.

11 **Comment.** Section 575 is amended to reflect the elimination of the justice court. Cal. Const. art  
12 VI, § 5(b). Section 575 is also amended to make other technical changes.

13 **Code Civ. Proc. § 575.1 (technical amendment). Local rules**

14 SEC. \_\_\_. Section 575.1 of the Code of Civil Procedure is amended to read:

15 575.1. (a) The presiding judge of each ~~superior, municipal, and justice~~ superior  
16 or municipal court may prepare, with the assistance of appropriate committees of  
17 the court, proposed local rules designed to expedite and facilitate the business of  
18 the court. The rules need not be limited to those actions on the civil active list, but  
19 may provide for the supervision and judicial management of actions from the date  
20 they are filed. Rules prepared pursuant to this section shall be submitted for  
21 consideration to the judges of the court and, upon approval by a majority of the  
22 judges, the judges shall have the proposed rules published and submitted to the  
23 local bar and others, as specified by the Judicial Council, for consideration and  
24 recommendations.

25 (b) After a majority of the judges have officially adopted the rules, 61 copies or a  
26 greater number as specified by Judicial Council rule, shall be filed with the  
27 Judicial Council as required by Section 68071 of the Government Code. The  
28 Judicial Council shall deposit a copy of each rule and amendment with each  
29 county law library or county clerk where it shall be made available for public  
30 examination. The local rules shall also be published for general distribution in  
31 accordance with rules adopted by the Judicial Council. Each court shall make its  
32 local rules available for inspection and copying in every location of the court that  
33 generally accepts filing of papers. The court may impose a reasonable charge for  
34 copying the rules and may impose a reasonable page limit on copying. The rules  
35 shall be accompanied by a notice indicating where a full set of the rules may be  
36 purchased.

37 (c) If a judge of a court adopts a rule which applies solely to cases in that judge's  
38 courtroom, or a particular branch or district of a court adopts a rule that applies  
39 solely to cases in that particular branch or district of a court, the court shall publish  
40 these rules as part of the general publication of rules required by the California  
41 Rules of Court. The court shall organize the rules so that rules on a common  
42 subject, whether individual, branch, district, or courtwide appear sequentially.

1 Individual judges' rules and branch and district rules are local rules of court for  
2 purposes of this section and for purposes of the adoption, publication, comment,  
3 and filing requirements set forth in the Judicial Council rules applicable to local  
4 court rules.

5 **Comment.** Section 575.1 is amended to reflect the elimination of the justice court. Cal. Const.  
6 art VI, § 5(b).

7 • **Code Civ. Proc. § 580 (amended). Relief awardable in civil causes**

8 SEC. \_\_\_\_\_. Section 580 of the Code of Civil Procedure is amended to read:

9 580. ~~The relief granted to the plaintiff, if there is no answer, cannot exceed that~~  
10 ~~which he or she shall have demanded in his or her complaint or in the statement~~  
11 ~~required by Section 425.11; but in any other case. (a) Except as otherwise~~  
12 ~~provided by statute, in a civil cause the court may grant the plaintiff any relief~~  
13 ~~consistent with the case made by the complaint and embraced within the issue. The~~  
14 ~~court may impose liability, whether the theory upon which liability is sought to be~~  
15 ~~imposed involves legal or equitable principles.~~

16 (b) In a beta matter the relief granted to the plaintiff cannot exceed twenty-five  
17 thousand dollars (\$25,000).

18 (c) In any civil cause, if there is no answer, the relief granted to the plaintiff  
19 cannot exceed that which the plaintiff shall have demanded in the complaint or in  
20 the statement required by Section 425.11.

21 **Comment.** Section 580 is amended to reflect the elimination of the justice court, and the  
22 authority of the municipal and superior courts in each county to unify their operations in the  
23 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

24 Subdivision (a) continues the rule that courts are not strictly confined to the content of  
25 plaintiff's prayer in awarding relief. Subdivision (a) is also amended to incorporate, with  
26 modification, the substance of former Section 86(c), which provided: "In any action that is  
27 otherwise within its jurisdiction, the court may impose liability whether the theory upon which  
28 liability is sought to be imposed involves legal or equitable principles." For additional provisions  
29 according the superior courts authority to fashion appropriate remedies, see Civ. Code § 1428  
30 ("An obligation arising from operation of law may be enforced in the manner provided by law, or  
31 by civil action or proceeding"); Civ. Code § 3523 ("For every wrong there is a remedy"); Code  
32 Civ. Proc. § 187 (When jurisdiction is conferred, so are all the means necessary to carry it into  
33 effect and, unless otherwise directed, the court may adopt any suitable process or mode of  
34 proceeding); B. Witkin, *California Procedure, Actions*, §§ 1-9, at 32-40 (3d ed. 1985). The courts  
35 are not restricted to granting the forms of relief sought at trial. See B. Witkin, *California*  
36 *Procedure, Pleading*, § 1156, at 573-74 (3d ed. 1985).

37 Subdivision (b) limits the relief awardable if every cause in the matter is a beta cause and the  
38 amount in controversy is \$25,000 or less. See Section 85 (beta matters) & Comment. For  
39 examples of statutes classifying civil causes as beta causes, see Section 86 (beta causes) &  
40 Comment. Formerly, causes like those now classified as beta causes were within the jurisdiction  
41 of the municipal and justice courts. See Section 86 Comment. The jurisdictional limits of those  
42 courts constrained the relief awardable in such matters. See *Security Pacific Bank v. Lyon*, 105  
43 Cal. App. 3d Supp. 8, 12-13, 165 Cal. Rptr. 95 (1980); see also former Code Civ. Proc. §§ 86,  
44 396; *Stokus v. Marsh*, 217 Cal. App. 3d 647, 266 Cal. Rptr. 90 (1990); *Bakkebo v. Municipal*  
45 *Court*, 124 Cal. App. 3d 229, 177 Cal. Rptr. 239 (1981). In a county in which the municipal and  
46 superior courts unify their operations, however, the original jurisdiction of the unified superior  
47 court is broad. See Section 87 (original jurisdiction of superior court) & Comment & Cal. Const.  
48 art. VI, § 10. Subdivision (b) makes explicit that although the jurisdiction of the unified superior

1 court includes matters in which the amount in controversy exceeds \$25,000, in a beta matter the  
2 court cannot grant relief exceeding \$25,000. See also Sections 85 (beta matters), 425.10  
3 (statement of facts), 430.10 (objection to complaint or cross-complaint).

4 Subdivision (c) applies to any cause in which the defendant fails to answer. It continues without  
5 substantive change the restriction on the relief awardable in those circumstances.  
6

☞ **Staff Note.** Is subdivision (b) necessary, or are Sections 85 (beta matters), 425.10 (statement of facts), and 430.10 (objection to complaint or cross-complaint) sufficient to establish that the relief awardable in a beta matter is limited to \$25,000? Because beta matters are subject to economic litigation procedures (see Section 91) and litigants may balk at using those abbreviated procedures unless it is clear that the relief cannot exceed \$25,000, the express language in subdivision (b) may be helpful.

7 **Code Civ. Proc. § 581d (technical amendment). Dismissal**

8 SEC. \_\_. Section 581d of the Code of Civil Procedure is amended to read:

9 581d. A written dismissal of an action shall be entered in the clerk's register and  
10 is effective for all purposes when so entered. All dismissals ordered by the court  
11 shall be in the form of a written order signed by the court and filed in the action  
12 and ~~such orders~~ a dismissal when so filed shall constitute ~~judgments~~ a judgment  
13 and be effective for all purposes, and the clerk ~~in superior, municipal, and justice~~  
14 ~~courts~~ shall note ~~such judgments in his~~ the judgment in the register of actions ~~in~~  
15 ~~the case.~~

16 **Comment.** Section 581d is amended to reflect the elimination of the justice court. Cal. Const.  
17 art VI, § 5(b). Section 581d is also amended to make other technical changes.

18 • **Code Civ. Proc. § 582.5 (added). Judgment for payment of money in a beta matter**

19 SEC. \_\_\_\_\_. Section 582.5 is added to the Code of Civil Procedure, to read:

20 582.5. If the judgment or order in a beta matter in which the defendant has  
21 appeared is for the payment of money by the defendant, the defendant shall pay  
22 the judgment immediately or at any time and upon terms and conditions, including  
23 installment payments, which the court may prescribe. The court may amend the  
24 terms and conditions for payment of the judgment or order at any time to provide  
25 for installment payments for good cause upon motion by a party and notice to all  
26 affected parties, regardless of the nature of the underlying debt and regardless  
27 whether the moving party appeared before entry of the judgment or order. In any  
28 determination regarding the imposition of terms and conditions upon the payment  
29 of the judgment, the court shall consider any factors which would be relevant to  
30 the determination of a claim for exemption pursuant to Chapter 4 (commencing  
31 with Section 703.010) of Division 2 of Title 9 of Part 2 or the examination of a  
32 debtor pursuant to Article 2 (commencing with Section 708.110) of Chapter 6 of  
33 Division 2 of Title 9.

34 **Comment.** Section 582.5 continues former Section 85 without substantive change, except that  
35 Section 85 referred to the municipal and justice courts, whereas Section 582.5 pertains to beta  
36 matters. A matter is a beta matter if every cause in the matter is a beta cause and the amount in  
37 controversy is \$25,000 or less. See Section 85 (beta matters) & Comment. For examples of

1 statutes classifying civil causes as beta causes, see Section 86 (beta causes) & Comment.  
2 Formerly, causes like those now classified as beta causes were within the jurisdiction of the  
3 municipal and justice courts and those courts had jurisdiction only of matters in which the amount  
4 in controversy was \$25,000 or less. See Section 85 Comment. Section 582.5 thus continues the  
5 effect of former law.

6 Section 582.5 also makes technical, nonsubstantive revisions in former Section 85.  
7

☞ **Staff Note.** Section 85 presently gives municipal courts broad discretion to set the terms and conditions for payment of money judgments. As far as the staff has deduced from limited research, the superior courts have less discretion in this regard than the municipal courts. For example, Code of Civil Procedure Section 667.7 authorizes superior courts to enter judgments for periodic payments under certain circumstances in actions for injury or damages against health care providers. In contrast, Section 85 grants municipal and justice courts authority to provide for installment payments “regardless of the nature of the underlying debt and regardless whether the moving party appeared before entry of such judgment or order.” See Witkin, *California Procedure, Judgment*, § 32. Further research is necessary to confirm whether the superior courts actually have less discretion than the municipal and justice courts, understand whatever differences do exist, and determine whether such differentiation should continue. The staff recommends adding this area to the Commission’s list of potential study topics.

8 **Code Civ. Proc. § 594 (technical amendment). Bringing issues to trial or hearing**

9 SEC. \_\_. Section 594 of the Code of Civil Procedure is amended to read:

10 594. (a) In ~~superior, municipal, and justice~~ superior and municipal courts, either  
11 party may bring an issue to trial or to a hearing, and, in the absence of the adverse  
12 party, unless the court, for good cause, otherwise directs, may proceed with ~~his~~ the  
13 case and take a dismissal of the action, or a verdict, or judgment, as the case may  
14 require; provided, however, if the issue to be tried is an issue of fact, proof shall  
15 first be made to the satisfaction of the court that the adverse party has had 15 days’  
16 notice of ~~such~~ the trial or five days’ notice of ~~such~~ the trial in an unlawful detainer  
17 action as specified in subdivision (b). If the adverse party has served notice of trial  
18 upon the party seeking the dismissal, verdict, or judgment at least five days prior  
19 to the trial, the adverse party shall be deemed to have had ~~such~~ sufficient notice.

20 (b) The notice to the adverse party required by subdivision (a) shall be served by  
21 mail on all the parties by the clerk of the court not less than 20 days prior to the  
22 date set for trial. In an unlawful detainer action where notice is served by mail  
23 ~~such service~~ the notice shall be mailed not less than 10 days prior to the date set  
24 for trial. If notice is not served by the clerk as required by this subdivision, it may  
25 be served by mail by any party on the adverse party not less than 15 days prior to  
26 the date set for trial, and in an unlawful detainer action where notice is served by  
27 mail ~~such service~~ the notice shall be mailed not less than 10 days prior to the date  
28 set for trial. The time provisions of Section 1013 shall not serve to extend the  
29 notice of trial requirements under this subdivision for unlawful detainer actions. If  
30 notice is served by the clerk, proof ~~thereof~~ of service may be made by introduction  
31 into evidence of the clerk’s certificate pursuant to subdivision (3) of Section 1013a

1 or other competent evidence. If notice is served by a party, proof may be made by  
2 introduction into evidence of an affidavit or certificate pursuant to subdivision (1)  
3 or (2) of Section 1013a or other competent evidence. The provisions of this  
4 subdivision are exclusive.

5 **Comment.** Section 594 is amended to reflect the elimination of the justice court. Cal. Const. art  
6 VI, § 5(b). Section 594 is also amended to make other technical changes.

7 **Code Civ. Proc. § 628 (technical amendment). Entry upon receipt of verdict**

8 SEC. \_\_\_. Section 628 of the Code of Civil Procedure is amended to read:

9 628. In ~~superior, municipal, and justice~~ superior and municipal courts, upon  
10 receipt of a verdict, an entry must be made in the minutes of the court, specifying  
11 the time of trial, the names of the jurors and witnesses, and setting out the verdict  
12 at length; and where special verdict is found, either the judgment rendered ~~thereon~~,  
13 or if the case be reserved for argument or further consideration, the order thus  
14 reserving it.

15 **Comment.** Section 628 is amended to reflect the elimination of the justice court. Cal. Const. art  
16 VI, § 5(b). Section 628 is also amended to make another technical change.

17 **Code Civ. Proc. § 632 (technical amendment). Statement of decision**

18 SEC. \_\_\_. Section 632 of the Code of Civil Procedure is amended to read:

19 632. In ~~superior, municipal, and justice~~ superior and municipal courts, upon the  
20 trial of a question of fact by the court, written findings of fact and conclusions of  
21 law shall not be required. The court shall issue a statement of decision explaining  
22 the factual and legal basis for its decision as to each of the principal controverted  
23 issues at trial upon the request of any party appearing at the trial. The request must  
24 be made within 10 days after the court announces a tentative decision unless the  
25 trial is concluded within one calendar day or in less than eight hours over more  
26 than one day in which event the request must be made prior to the submission of  
27 the matter for decision. The request for a statement of decision shall specify those  
28 controverted issues as to which the party is requesting a statement of decision.  
29 After a party has requested such a statement of decision , any party may make  
30 proposals as to the content of the statement of decision.

31 The statement of decision shall be in writing, unless the parties appearing at trial  
32 agree otherwise; however, when the trial is concluded within one calendar day or  
33 in less than 8 hours over more than one day, the statement of decision may be  
34 made orally on the record in the presence of the parties.

35 **Comment.** Section 632 is amended to reflect the elimination of the justice court. Cal. Const. art  
36 VI, § 5(b). Section 632 is also amended to make other technical changes.

37 **Code Civ. Proc. § 655 (technical amendment). Application of article to superior and**  
38 **municipal courts**

39 SEC. \_\_\_. Section 655 of the Code of Civil Procedure is amended to read:

40 655. The provisions of this article apply to ~~superior, municipal, or justice~~ courts  
41 superior and municipal courts.

1 **Comment.** Section 655 is amended to reflect the elimination of the justice court. Cal. Const. art  
2 VI, § 5(b).

3 **Code Civ. Proc. § 668 (technical amendment). Judgment book**

4 SEC. \_\_. Section 668 of the Code of Civil Procedure is amended to read:

5 668. Except as provided in Section 668.5, the clerk of ~~the superior, municipal,~~  
6 ~~and justice court~~ a superior or municipal court, must keep, with the records of the  
7 court, a book called the “judgment book,” in which judgments must be entered.

8 **Comment.** Section 668 is amended to reflect the elimination of the justice court. Cal. Const. art  
9 VI, § 5(b).

10 **Code Civ. Proc. § 670 (technical amendment). Judgment roll**

11 SEC. \_\_. Section 670 of the Code of Civil Procedure is amended to read:

12 670. In ~~superior, municipal, and justice~~ superior and municipal courts, the  
13 following papers, without being attached together, shall constitute the judgment  
14 roll:

15 (a) In case the complaint is not answered by any defendant, the summons, with  
16 the affidavit or proof of service; the complaint; the request for entry of default with  
17 a memorandum ~~indorsed thereon~~ on it stating that the default of the defendant in  
18 not answering was entered, and a copy of the judgment; if defendant has appeared  
19 by demurrer, and the demurrer has been overruled, then notice of the overruling  
20 thereof served on defendant’s attorney, together with proof of the service; and in  
21 case the service so made is by publication, the affidavit for publication of  
22 summons, and the order directing the publication of summons.

23 (b) In all other cases, the pleadings, all orders striking out any pleading in whole  
24 or in part, a copy of the verdict of the jury, the statement of decision of the court,  
25 or finding of the referee, and a copy of any order made on demurrer, or relating to  
26 a change of parties, and a copy of the judgment; if there are two or more  
27 defendants in the action, and any one of them has allowed judgment to pass  
28 ~~against him or her~~ by default, the summons, with proof of its service, on the  
29 defendant, and if the service on the defaulting defendant be by publication, then  
30 the affidavit for publication, and the order directing the publication of the  
31 summons.

32 **Comment.** Section 670 is amended to reflect the elimination of the justice court. Cal. Const. art  
33 VI, § 5(b). Section 670 is also amended to make other technical changes.

34 **• Code Civ. Proc. § 685.030 (amended). Satisfaction of money judgment**

35 SEC. \_\_. Section 685.030 of the Code of Civil Procedure is amended to read:

36 685.030. (a) If a money judgment is satisfied in full pursuant to a writ under this  
37 title, interest ceases to accrue on the judgment:

38 (1) If the proceeds of collection are paid in a lump sum, on the date of levy.

39 (2) If the money judgment is satisfied pursuant to an earnings withholding order,  
40 on the date and in the manner provided in Section 706.024 or Section 706.028.

1 (3) In any other case, on the date the proceeds of sale or collection are actually  
2 received by the levying officer.

3 (b) If a money judgment is satisfied in full other than pursuant to a writ under  
4 this title, interest ceases to accrue on the date the judgment is satisfied in full.

5 (c) If a money judgment is partially satisfied pursuant to a writ under this title or  
6 is otherwise partially satisfied, interest ceases to accrue as to the part satisfied on  
7 the date the part is satisfied.

8 (d) For the purposes of subdivisions (b) and (c), the date a money judgment is  
9 satisfied in full or in part is the earliest of the following times:

10 (1) The date satisfaction is actually received by the judgment creditor.

11 (2) The date satisfaction is tendered to the judgment creditor or deposited in  
12 court for the judgment creditor.

13 (3) The date of any other performance that has the effect of satisfaction.

14 (e) The clerk of a municipal or unified superior ~~or justice~~ court may enter in the  
15 Register of Actions a writ of execution on a money judgment in a beta matter as  
16 returned wholly satisfied when the judgment amount, as specified on the writ, is  
17 fully collected and only an interest deficit of no more than ten dollars (\$10) exists,  
18 due to automation of the continual daily interest accrual calculation.

19 **Comment.** Subdivision (e) of Section 685.030 is amended to reflect the elimination of the  
20 justice court, and the authority of the municipal and superior courts in each county to unify their  
21 operations in the superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

22 See Section 85 (beta matters) & Comment. See also Sections 82 (alpha causes), 83 (alpha  
23 matters), 86 (beta causes) & Comments.

24 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
25 matters and beta matters, see Memorandum 97-38.

26 • **Code Civ. Proc. § 688.010 (amended). Jurisdiction**

27 SEC. \_\_. Section 688.010 of the Code of Civil Procedure is amended to read:

28 688.010. For the purpose of the remedies provided under this article, jurisdiction  
29 is conferred upon any of the following courts:

30 (a) The superior court, regardless whether the municipal ~~or justice~~ court also has  
31 jurisdiction under subdivision (b).

32 (b) The municipal ~~or justice~~ court if (1) the amount of liability sought to be  
33 collected does not exceed the jurisdictional amount of the court twenty five  
34 thousand dollars (\$25,000), and (2) the legality of the liability being enforced is  
35 not contested by the person against whom enforcement is sought. A cause that  
36 satisfies both of these requirements is a beta cause.

37 **Comment.** Section 688.010 is amended to reflect the elimination of the justice court, and the  
38 authority of the municipal and superior courts in each county to unify their operations in the  
39 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. For examples of other provisions classifying  
40 causes as beta causes, see Section 86 (beta causes) & Comment. If every cause in a matter is a  
41 beta cause and the amount in controversy is \$25,000 or less, the matter is a beta matter. See  
42 Section 85 (beta matters) & Comment.

43

☞ **Staff Note.** Professor Kelso has pointed out that Section 688.010 may be unconstitutional because it appears to create concurrent jurisdiction in the superior and municipal courts for purposes of enforcing the “remedies provided under this article,” which relates to the enforcement of state tax liabilities. Arguably, concurrent jurisdiction should not be possible since the Constitution vests original jurisdiction in the superior court “in all causes except those given by statute to other trial courts.” The staff suggests adding this issue to the Commission’s list of potential study topics.

1 • **Code Civ. Proc. § 720.160 (amended). Undertaking by creditor**

2 SEC. \_\_. Section 720.160 of the Code of Civil Procedure is amended to read:

3 720.160. (a) If the creditor files with the levying officer an undertaking that  
4 satisfies the requirements of this section within the time allowed under subdivision  
5 (b) of Section 720.140:

6 (1) The levying officer shall execute the writ in the manner provided by law  
7 unless the third person files an undertaking to release the property pursuant to  
8 Chapter 6 (commencing with Section 720.610).

9 (2) After sale, payment, or delivery of the property pursuant to the writ, the  
10 property is free of all claims of the third person for which the creditor has given  
11 the undertaking.

12 (b) Subject to Sections 720.770 and 996.010, unless the creditor elects to file an  
13 undertaking in a larger amount, the amount of the undertaking filed by the creditor  
14 under this section shall be in the amount of:

15 (1) If the action is ~~pending an alpha matter~~, or the judgment was entered in the  
16 ~~superior court~~, an alpha matter, seven thousand five hundred dollars (\$7,500), or  
17 twice the amount of the execution lien as of the date of levy or other enforcement  
18 lien as of the date it was created, whichever is the lesser amount.

19 (2) If the action is ~~pending a beta matter~~, or the judgment was entered in a  
20 ~~municipal or justice court~~, a beta matter, two thousand five hundred dollars  
21 (\$2,500), or twice the amount of the execution lien as of the date of levy or other  
22 enforcement lien as of the date it was created, whichever is the lesser amount.

23 (c) An undertaking given by the creditor under this chapter shall:

24 (1) Be made in favor of the third person.

25 (2) Indemnify the third person against any loss, liability, damages, costs, and  
26 attorney’s fees, incurred by reason of the enforcement proceedings.

27 (3) Be conditioned on a final judgment that the third person owns or has the right  
28 of possession of the property.

29 (d) If the creditor is a public entity exempt from giving an undertaking, the  
30 public entity shall, in lieu of filing the undertaking, file with the levying officer a  
31 notice stating that the public entity opposes the claim of the third person. When so  
32 filed, the notice is deemed to satisfy the requirement of this section that an  
33 undertaking be filed.

34 **Comment.** Section 720.160 is amended to reflect the elimination of the justice court, and the  
35 authority of the municipal and superior courts in each county to unify their operations in the

1 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. Formerly, each county had one or more  
2 municipal courts and a superior court, and Section 720.160 required an undertaking of \$2,500 for  
3 an action in municipal court and \$7,500 for an action in superior court. See former Section  
4 720.160. A beta matter is equivalent to an action in municipal court and an alpha matter is  
5 equivalent to an action in a non-unified superior court, so Section 720.160 as amended continues  
6 the effect of former law. See Sections 82 (alpha causes), 83 (alpha matters), 85 (beta matters), 86  
7 (beta causes) & Comments.

8 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
9 matters and beta matters, see Memorandum 97-38.

10 • **Code Civ. Proc. § 720.260 (amended). Undertaking by creditor**

11 SEC. \_\_. Section 720.260 of the Code of Civil Procedure is amended to read:

12 720.260. (a) If the creditor within the time allowed under subdivision (b) of  
13 Section 720.240 either files with the levying officer an undertaking that satisfies  
14 the requirements of this section and a statement that satisfies the requirements of  
15 Section 720.280 or makes a deposit with the levying officer of the amount claimed  
16 under Section 720.230:

17 (1) The levying officer shall execute the writ in the manner provided by law  
18 unless, in a case where the creditor has filed an undertaking, the secured party or  
19 lienholder files an undertaking to release the property pursuant to Chapter 6  
20 (commencing with Section 720.610).

21 (2) After sale, payment, or delivery of the property pursuant to the writ, the  
22 property is free of all claims or liens of the secured party or lienholder for which  
23 the creditor has given the undertaking or made the deposit.

24 (b) Subject to Sections 720.770 and 996.010, unless the creditor elects to file an  
25 undertaking in a larger amount, the amount of the undertaking filed by the creditor  
26 under this section shall be in the amount of:

27 (1) If the action is ~~pending an alpha matter~~, or the judgment was entered in ~~the~~  
28 ~~superior court~~, an alpha matter, seven thousand five hundred dollars (\$7,500), or  
29 twice the amount of the execution lien as of the date of levy or other enforcement  
30 lien as of the date it was created, whichever is the lesser amount.

31 (2) If the action is ~~pending a beta matter~~, or the judgment was entered in a  
32 ~~municipal or justice court~~, beta matter, two thousand five hundred dollars  
33 (\$2,500), or twice the amount of the execution lien as of the date of levy or other  
34 enforcement lien as of the date it was created, whichever is the lesser amount.

35 (c) An undertaking given by the creditor under this chapter shall:

36 (1) Be made in favor of the secured party or lienholder.

37 (2) Indemnify the secured party or lienholder against any loss, liability, damages,  
38 costs, and attorney's fees, incurred by reason of the enforcement proceedings.

39 (3) Be conditioned on a final judgment that the security interest or lien of the  
40 third person is entitled to priority over the creditor's lien.

41 (d) If the creditor is a public entity exempt from giving an undertaking, the  
42 public entity shall, in lieu of filing the undertaking, file with the levying officer a  
43 notice stating that the public entity opposes the claim of the third person. When so

1 filed, the notice is deemed to satisfy the requirement of this section that an  
2 undertaking be filed.

3 **Comment.** Section 720.260 is amended to reflect the elimination of the justice court, and the  
4 authority of the municipal and superior courts in each county to unify their operations in the  
5 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. Formerly, each county had one or more  
6 municipal courts and a superior court, and Section 720.260 required an undertaking of \$2,500 for  
7 an action in municipal court and \$7,500 for an action in superior court. See former Section  
8 720.260. A beta matter is equivalent to an action in municipal court and an alpha matter is  
9 equivalent to an action in a non-unified superior court, so Section 720.260 as amended continues  
10 the effect of former law. See Sections 82 (alpha causes), 83 (alpha matters), 85 (beta matters), 86  
11 (beta causes) & Comments.

12 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
13 matters and beta matters, see Memorandum 97-38.

14 **Code Civ. Proc. § 904 (repealed). Authority to take appeal in general**

15 SEC. \_\_\_. Section 904 of the Code of Civil Procedure is repealed.

16 904. ~~An appeal may be taken in a civil action or proceeding as provided in~~  
17 ~~Sections 904.1, 904.2, 904.3, 904.4, and 904.5.~~

18 **Comment.** Section 904 is repealed as unnecessary and obsolete.

19 • **Code Civ. Proc. § 904.1 (amended). Taking appeal in alpha matter**

20 SEC. \_\_\_. Section 904.1 of the Code of Civil Procedure is amended to read:

21 904.1. (a) An appeal may be taken ~~from a superior court~~ in an alpha matter in the  
22 following ~~eases~~ circumstances:

23 (1) From a judgment, except (A) an interlocutory judgment, other than as  
24 provided in paragraphs (8), (9), and (11), (B) a judgment of contempt which is  
25 made final and conclusive by Section 1222, or (C) ~~a judgment on appeal from a~~  
26 ~~municipal court or a justice court or a small claims court, or~~ (D) a judgment  
27 granting or denying a petition for issuance of a writ of mandamus or prohibition  
28 directed to a unified superior court or a municipal court ~~or a justice court~~ or the  
29 judge or judges thereof which relates to a matter pending in the unified superior  
30 court ~~or~~ municipal ~~or~~ justice court. However, an appellate court may, in its  
31 discretion, review a judgment granting or denying a petition for issuance of a writ  
32 of mandamus or prohibition, or a judgment or order for the payment of monetary  
33 sanctions, upon petition for an extraordinary writ.

34 (2) From an order made after a judgment made appealable by paragraph (1).

35 (3) From an order granting a motion to quash service of summons or granting a  
36 motion to stay or dismiss the action on the ground of inconvenient forum.

37 (4) From an order granting a new trial or denying a motion for judgment  
38 notwithstanding the verdict.

39 (5) From an order discharging or refusing to discharge an attachment or granting  
40 a right to attach order.

41 (6) From an order granting or dissolving an injunction, or refusing to grant or  
42 dissolve an injunction.

43 (7) From an order appointing a receiver.

1 (8) From an interlocutory judgment, order, or decree, hereafter made or entered  
2 in an action to redeem real or personal property from a mortgage thereof, or a lien  
3 thereon, determining the right to redeem and directing an accounting.

4 (9) From an interlocutory judgment in an action for partition determining the  
5 rights and interests of the respective parties and directing partition to be made.

6 (10) From an order made appealable by the provisions of the Probate Code or the  
7 Family Code.

8 (11) From an interlocutory judgment directing payment of monetary sanctions  
9 by a party or an attorney for a party if the amount exceeds five thousand dollars  
10 (\$5,000).

11 (12) From an order directing payment of monetary sanctions by a party or an  
12 attorney for a party if the amount exceeds five thousand dollars (\$5,000).

13 (b) Sanction orders or judgments of five thousand dollars (\$5,000) or less against  
14 a party or an attorney for a party may be reviewed on an appeal by that party after  
15 entry of final judgment in the main action, or, at the discretion of the court of  
16 appeal, may be reviewed upon petition for an extraordinary writ.

17 **Comment.** Section 904.1 is amended to reflect the elimination of the justice court, and the  
18 authority of the municipal and superior courts in each county to unify their operations in the  
19 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. For guidance on what constitutes an alpha  
20 matter, see Sections 82 (alpha causes) & 83 (alpha matters) & Comments. For guidance on the  
21 appellate jurisdiction of an alpha matter, see Section 904.5 (appellate jurisdiction) & Comment.

22 Paragraph (a)(1)(C), which made nonreviewable “a judgment on appeal from municipal court  
23 or a justice court or a small claims court,” is deleted as unnecessary, because Section 904.1 as  
24 amended applies only to alpha matters and alpha matters are not subject to the appellate  
25 jurisdiction of the appellate division. See Section 904.5 (appellate jurisdiction).

26  **Staff Note.** The staff is still analyzing and considering the necessity of current paragraph  
(a)(1)(D). We plan to comment on that point at the Commission’s meeting.

27  
28 • **Code Civ. Proc. § 904.2 (amended). Taking appeal in beta matter**

29 SEC. \_\_. Section 904.2 of the Code of Civil Procedure is amended to read:

30 904.2. An appeal may be taken ~~from a municipal or justice court~~ in a beta matter  
31 in the following eases circumstances:

32 (a) From a judgment, except (1) an interlocutory judgment, or (2) a judgment of  
33 contempt which is made final and conclusive by Section 1222.

34 (b) From an order made after a judgment made appealable by subdivision (a).

35 (c) From an order changing or refusing to change the place of trial.

36 (d) From an order granting a motion to quash service of summons or granting a  
37 motion to stay or dismiss the action on the ground of inconvenient forum.

38 (e) From an order granting a new trial or denying a motion for judgment  
39 notwithstanding the verdict.

1 (f) From an order discharging or refusing to discharge an attachment or granting  
2 a right to attach order.

3 (g) From an order granting or dissolving an injunction, or refusing to grant or  
4 dissolve an injunction.

5 (h) From an order appointing a receiver.

6 (i) ~~From a judgment of the small claims court.~~

7 **Comment.** Section 904.2 is amended to reflect the elimination of the justice court, and the  
8 authority of the municipal and superior courts in each county to unify their operations in the  
9 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. For guidance on what constitutes a beta  
10 matter, see Sections 85 (beta matters) & 86 (beta causes) & Comments. For guidance on the  
11 appellate jurisdiction of a beta matter, see Section 904.5 (appellate jurisdiction).

12 Subdivision (i) is deleted because review of a judgment of the small claims division is governed  
13 by Sections 116.710-116.795.

14 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
15 matters and beta matters, see Memorandum 97-38.

16 • **Code Civ. Proc. § 904.5 (amended). Appellate jurisdiction**

17 SEC. \_\_. Section 904.5 of the Code of Civil Procedure is amended to read:

18 904.5. (a) Except as otherwise provided by statute, any appealable alpha matter  
19 is subject to the appellate jurisdiction of the court of appeal.

20 (b) Except as otherwise provided by statute, any appealable beta matter is  
21 subject to the appellate jurisdiction of the appellate division.

22 (c) Appeals from the small claims division of a justice superior or municipal  
23 court shall be governed by the Small Claims Act (Chapter 5.5 5 (commencing with  
24 Section 116.110) of Title 1 of Part 1 ).

25 (d) Nothing in this section provides a right of appeal in any civil cause that is  
26 nonappealable by law.

27 **Comment.** Section 904.5 is amended to reflect the elimination of the justice court, and the  
28 authority of the municipal and superior courts in each county to unify their operations in the  
29 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

30 In combination with Sections 82 (alpha causes) and 83 (alpha matters), subdivision (a) tracks  
31 Article VI, Section 11 of the California Constitution. See Sections 82 & 83 Comments. For the  
32 circumstances under which an appeal may be taken in an alpha matter, see Section 904.1 (taking  
33 appeal in alpha matter).

34 In combination with Sections 85 (beta matters) and the provisions classifying causes as beta  
35 causes (see, e.g., Section 86), subdivision (b) tracks Article VI, Section 11 of the California  
36 Constitution. See Sections 85 & 86 Comments. For the circumstances under which an appeal may  
37 be taken in a beta matter, see Section 904.2 (taking appeal in beta matter).

38 Subdivision (c) governs appellate jurisdiction in small claims matters. Although an appeal may  
39 be taken from a judgment of the small claims court in certain circumstances (see Section  
40 116.710), such appeals are governed by the Small Claims Act and are not subject to the  
41 jurisdiction of the appellate division.

42 Subdivision (d) clarifies that subdivisions (a), (b), and (c) do not provide a basis for appealing  
43 the result in any civil cause that is otherwise nonappealable by law.

44 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
45 matters and beta matters, see Memorandum 97-38.

1 **Code Civ. Proc. § 911 (amended). Transfer from appellate division to court of appeal**

2 SEC. \_\_. Section 911 of the Code of Civil Procedure is amended to read:

3 911. A court of appeal may order any case on appeal within the ~~original~~  
4 ~~jurisdiction of the municipal and justice courts~~ appellate jurisdiction of the  
5 appellate division of a superior court in its district transferred to it for hearing and  
6 decision as provided by rules of the Judicial Council when the appellate division  
7 of a superior court certifies, or the court of appeal determines, that ~~such~~ transfer  
8 appears necessary to secure uniformity of decision or to settle important questions  
9 of law.

10 No case in which there is a right on appeal to a trial anew in the superior court  
11 shall be transferred pursuant to this section before a decision in ~~such~~ the case  
12 becomes final ~~therein~~.

13 A court to which any case is transferred pursuant to this section shall have  
14 similar power to review any matter and make orders and judgments as the  
15 appellate division of the superior court would have in ~~such~~ the case, except that if  
16 the case was tried anew in the superior court, the reviewing court shall have  
17 similar power to review any matter and make orders and judgments as it has in a  
18 case within the ~~original jurisdiction of the superior court~~ direct appellate  
19 jurisdiction of the court of appeal.

20 **Comment.** Section 911 is amended to reflect the elimination of the justice court, and the  
21 authority of the municipal and superior courts in each county to unify their operations in the  
22 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. For explanation of which matters are subject to  
23 the appellate jurisdiction of the appellate division of the superior court, see Section 904.5  
24 (appellate jurisdiction).

25 Section 911 is also amended to make technical changes.

26 **Code Civ. Proc. § 912 (amended). Certification to trial court of result on appeal**

27 SEC. \_\_\_\_\_. Section 912 of the Code of Civil Procedure is amended to read:

28 912. Upon final determination of an appeal by the reviewing court, the clerk of  
29 the court shall remit to the trial court a certified copy of the judgment or order of  
30 the reviewing court and of its opinion, if any. The clerk of the trial court, ~~or the~~  
31 ~~judge, if there be no clerk, shall file such~~ shall file the certified copy of the  
32 judgment and opinion of the reviewing court, shall attach ~~the same~~ them to the  
33 judgment roll if the appeal was from a judgment, and shall enter a note of the  
34 judgment of the reviewing court stating whether the judgment or order appealed  
35 from has been affirmed, reversed or modified, in the margin of the original entry  
36 of ~~such~~ the judgment or order, and also in the register of actions or docket.

37 **Comment.** Section 912 is amended to reflect the elimination of the justice court, and the  
38 authority of the municipal and superior courts in each county to unify their operations in the  
39 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10.

40 The amendment deletes the clause authorizing the judge to substitute for the clerk if there be no  
41 clerk. That provision is obsolete because every municipal and superior court has a clerk.  
42 Additionally, judges have authority to perform any act that court clerks are allowed to perform.  
43 Section 167.

44 In the unified superior court, a matter appealed to the appellate division is reviewed in the same  
45 court as it is tried. Thus, when the reviewing court is the appellate division, the clerk of the

1 superior court may file the documents referenced in Section 912 directly, rather than via certified  
2 copy.

3 The amendment also makes technical changes.

4 **Code Civ. Proc. § 1012.5 (repealed). Facsimile transmission (FAX)**

5 SEC. \_\_. Section 1012.5 of the Code of Civil Procedure is repealed.

6 ~~1012.5. (a) The Legislature finds that the use of facsimile transmission (FAX~~  
7 ~~machines) has become commonplace in business and government. Currently, there~~  
8 ~~are over 2.5 million FAX machines in the nation and the legal profession owns~~  
9 ~~approximately 12 percent of these machines. Across the nation, courts are starting~~  
10 ~~to address the use of FAX machines in the judicial system as a means of~~  
11 ~~transmitting documents to the courts and to lawyers and litigants.~~

12 ~~Use of FAX transmission of documents may alleviate congestion in and around~~  
13 ~~courthouses, promote savings in the time spent by attorneys in filing documents~~  
14 ~~with the courts and with other attorneys and litigants, and ultimately, will result in~~  
15 ~~a savings to the legal consumer.~~

16 ~~Therefore, the Judicial Council shall conduct pilot projects to encompass cases~~  
17 ~~filed in three or more superior courts and three or more municipal or justice courts~~  
18 ~~from January 1, 1990, to December 31, 1992, to determine how best to implement~~  
19 ~~the use of facsimile transmission of documents in the judicial system and to assess~~  
20 ~~the extent of savings due to implementation of FAX transmission. Moreover, the~~  
21 ~~Judicial Council shall report to the Legislature on the results of these pilot projects~~  
22 ~~and its specific proposals for implementation.~~

23 ~~(b) The Judicial Council shall determine the effectiveness of these pilot projects~~  
24 ~~by conducting a survey of attorneys, judicial officers, clerks of court, and process~~  
25 ~~servers registered pursuant to Chapter 16 (commencing with Section 22350) of~~  
26 ~~Division 8 of the Business and Professions Code, to determine whether the pilot~~  
27 ~~project is effective in: (1) reducing courthouse congestion, (2) increasing~~  
28 ~~courthouse filings by FAX to at least 25 percent of all filings in those courts~~  
29 ~~participating in the pilot projects, (3) producing a time savings of at least 50~~  
30 ~~percent of the time normally required to file documents with the court, and (4)~~  
31 ~~producing a savings in costs billed to the client.~~

32 ~~(c) The Judicial Council shall report to the Legislature on these pilot projects and~~  
33 ~~make its recommendations on any changes in law needed to promote uniform,~~  
34 ~~efficient, and effective service or filing of legal documents by FAX on or before~~  
35 ~~December 31, 1991. The report shall include a compilation of data, proposed~~  
36 ~~standards, rules, or statutes for: (1) the types of facsimile machines, including~~  
37 ~~personal computers with facsimile modems, that are suitable for use by the courts~~  
38 ~~in receiving legal documents for filing, (2) the quality of paper to be used to ensure~~  
39 ~~the permanency of court records, (3) the readability of documents sent by~~  
40 ~~facsimile transmission, (4) the service and filing of documents which require an~~  
41 ~~original signature, (5) the service on other parties to the action of legal documents~~  
42 ~~by FAX, (6) the filing with the court of originals of documents first filed by FAX,~~

1 ~~(7) if necessary, modification of time periods for service and filing of documents~~  
2 ~~by FAX, and (8) the cost to the courts for the equipment, supplies, additional staff,~~  
3 ~~and administrative costs associated with the filing of legal documents by FAX and~~  
4 ~~how these costs should be recovered.~~

5 ~~(d) Notwithstanding any other provision of law, the Judicial Council may adopt~~  
6 ~~rules of court for use in the pilot project counties to facilitate the purposes of the~~  
7 ~~pilot project and to provide an appropriate experiment. Any rules of court adopted~~  
8 ~~by the Judicial Council pursuant to this subdivision shall not affect the~~  
9 ~~requirements for personal or substituted service of the summons and complaint or~~  
10 ~~any other opening paper.~~

11 **Comment.** Section 1012.5 is repealed as obsolete.  
12

 **Staff Note.** The pilot project established by Section 1012.5 should be over. Professor Kelso is confirming this with the Judicial Council.

13 **Code Civ. Proc. § 1029.6 (technical amendment). Complaint for damages against medical**  
14 **professionals or hospital**

15 SEC. \_\_. Section 1029.6 of the Code of Civil Procedure is amended to read:

16 1029.6. (a) Whenever a complaint for damages for personal injuries is filed  
17 against a physician and surgeon, dentist, registered nurse, dispensing optician,  
18 optometrist, pharmacist, registered physical therapist, podiatrist, licensed  
19 psychologist, osteopathic physician and surgeon, chiropractor, clinical laboratory  
20 bioanalyst, clinical laboratory technologist, or veterinarian, duly licensed as such  
21 under the laws of this state, or a licensed hospital as the employer of ~~any such~~  
22 ~~person~~ a person so licensed, in an action for error, omission, or negligence in the  
23 performance of professional services, or performance of professional services  
24 without consent, ~~any such~~ the defendant may, within six months after service of  
25 summons, move the court for an order, upon notice to plaintiff and all defendants  
26 having appeared in the action, and hearing, requiring the plaintiff to file an  
27 undertaking in a sum not to exceed five hundred dollars (\$500) as security for the  
28 costs of defense as provided in subdivision (d), which may be awarded against the  
29 plaintiff. The motion shall be supported by affidavit showing that the claim against  
30 the defendant is frivolous. Any defendant having appeared in the action and within  
31 30 days after receipt of notice may join with the moving party requesting an order  
32 under this section as to the additional defendant. The failure of any defendant to  
33 join with the moving party shall preclude that defendant from subsequently  
34 requesting an order under this section.

35 At the hearing upon the motion, the court shall order the plaintiff to file the  
36 undertaking if the defendant shows to the satisfaction of the court that: (i) the  
37 plaintiff would not suffer undue economic hardship in filing the undertaking and  
38 (ii) there is no reasonable possibility that the plaintiff has a cause of action against

1 each named defendant with respect to whom the plaintiff would otherwise be  
2 required to file the undertaking.

3 A determination by the court that an undertaking either shall or shall not be filed  
4 or shall be filed as to one or more defendants and not as to others, shall not be  
5 deemed a determination of any one or more issues in the action or of the merits  
6 thereof of the action. If the court, upon ~~any such~~ the motion, makes a  
7 determination that an undertaking be filed by the plaintiff as to any one or more  
8 defendants, the action shall be dismissed as to that defendant or defendants, unless  
9 the undertaking required by the court shall have been filed within the reasonable  
10 time as may be fixed by the court.

11 (b) This section does not apply to a complaint in an action commenced in a small  
12 claims ~~court~~ division.

13 (c) Whenever more than one defendant is named, the undertaking shall be  
14 increased to the extent of not to exceed five hundred dollars (\$500) for each  
15 additional defendant in whose favor the undertaking is ordered, not to exceed the  
16 total of one thousand dollars (\$1,000).

17 (d) In any action requiring an undertaking as provided in this section, upon the  
18 dismissal of the action or the award of judgment to the defendant, the court shall  
19 require the plaintiff to pay the defendant's court costs. Any sureties shall be liable  
20 for those costs in an amount not to exceed the sum of five hundred dollars (\$500)  
21 or the amount of the undertaking, whichever is lesser, for each defendant with  
22 respect to whom the sureties have executed an undertaking. If the plaintiff prevails  
23 in the action against any defendant with respect to whom an undertaking has been  
24 filed, the defendant shall pay the costs to plaintiff incurred in defending the motion  
25 for dismissal authorized by this section.

26 (e) Any defendant filing a motion under this section or joining with a moving  
27 party under this section is precluded from subsequently filing a motion for  
28 summary judgment.

29 (f) Any defendant filing a motion for summary judgment is precluded from  
30 subsequently filing a motion, or joining with a moving party, under this section.

31 **Comment.** Section 1029.6 is amended to make technical changes, including correction of the  
32 reference to the small claims court, which is colloquially acceptable but technically incorrect. See  
33 Section 116.210 & Comment.

34 • **Code Civ. Proc. § 1033 (amended). Small recovery**

35 SEC. \_\_. Section 1033 of the Code of Civil Procedure is amended to read:

36 1033. (a) ~~In the superior court, an alpha matter,~~ costs or any portion of claimed  
37 costs shall be as determined by the court in its discretion in accordance with  
38 Section 1034 where the prevailing party recovers a judgment that could have been  
39 rendered in a ~~court of lesser jurisdiction~~ a beta matter.

40 (b) ~~In a municipal or justice court, when~~ When a prevailing plaintiff recovers  
41 less than the amount prescribed by law as the maximum limitation upon the  
42 jurisdiction of the small claims ~~court~~ division, the following shall apply:

1 (1) When the party could have brought the action in the small claims court  
2 division but did not do so, the court may, in its discretion, allow or deny costs to  
3 the prevailing party, or may allow costs in part in any amount as it deems proper.

4 (2) When the party could not have brought the action in the small claims court  
5 division, costs and necessary disbursements shall be limited to the actual cost of  
6 the filing fee, the actual cost of service of process, and, when otherwise  
7 specifically allowed by law, reasonable attorney fees. However, those costs shall  
8 only be awarded to the plaintiff if the court is satisfied that prior to the  
9 commencement of the action, the plaintiff informed the defendant in writing of the  
10 intended legal action against the defendant and that legal action could result in a  
11 judgment against the defendant which would include the costs and necessary  
12 disbursements allowed by this paragraph.

13 **Comment.** Section 1033 is amended to reflect the elimination of the justice court, and the  
14 authority of the municipal and superior courts in each county to unify their operations in the  
15 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. For guidance on what constitutes an alpha  
16 matter and what constitutes a beta matter, see Sections 83 (alpha matters) & 85 (beta matters) &  
17 Comments. See also Sections 82 (alpha causes) & 86 (beta causes) & Comments.

18 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
19 matters and beta matters, see Memorandum 97-38.

20 **Code Civ. Proc. § 1052 (technical amendment). Register of civil actions in municipal court**

21 SEC. \_\_\_. Section 1052 of the Code of Civil Procedure is amended to read:

22 1052. The clerk of a municipal ~~or justice~~ court may keep among the records of  
23 the court a register of civil actions in which shall be entered the title of the action  
24 commenced in that court, with brief notes under it, from time to time, of all papers  
25 filed and proceedings had therein.

26 **Comment.** Section 1052 is amended to reflect the elimination of the justice court. Cal. Const.  
27 art VI, § 5(b). Section 1052 is also amended to make another technical change.

28 **Code Civ. Proc. § 1052.5 (technical amendment). Alternative methods of keeping register of**  
29 **actions**

30 SEC. \_\_\_. Section 1052.5 of the Code of Civil Procedure is amended to read:

31 1052.5. In lieu of maintaining a register of actions as described in Section 1052,  
32 the clerk of the municipal ~~or justice~~ court may maintain a register of actions by  
33 means of photographing, microphotographing, or mechanically or electronically  
34 storing the whole content of all papers and records, or any portion thereof, as will  
35 constitute a memorandum, necessary to the keeping of a register of actions so long  
36 as the completeness and chronological sequence of the register are not disturbed.

37 All ~~such~~ reproductions shall be placed in convenient, accessible files, and  
38 provision shall be made for preserving, examining, and using them.

39 Any photograph, microphotograph, or photocopy which is made pursuant to this  
40 section shall be made in ~~such~~ a manner and on ~~such~~ paper as will comply with the  
41 minimum standards of quality approved ~~therefor~~ by the National Bureau of  
42 Standards.

1 **Comment.** Section 1052.5 is amended to reflect the elimination of the justice court. Cal. Const.  
2 art VI, § 5(b). Section 1052.5 is also amended to make other technical changes.

3 **Code Civ. Proc. § 1060 (technical amendment). Declaration of rights and duties**

4 SEC. \_\_. Section 1060 of the Code of Civil Procedure is amended to read:

5 1060. Any person interested under a written instrument, excluding a will or a  
6 trust, or under a contract, or who desires a declaration of ~~his or her~~ the person's  
7 rights or duties with respect to another, or in respect to, in, over or upon property,  
8 or with respect to the location of the natural channel of a watercourse, may, in  
9 cases of actual controversy relating to the legal rights and duties of the respective  
10 parties, bring an original action or cross-complaint in the superior court or in the  
11 municipal ~~or justice~~ court to the extent allowed pursuant to Article 1 (commencing  
12 with Section 86) of Chapter 5 of Title 1 of Part 1 for a declaration of ~~his or her~~ the  
13 person's rights and duties in the premises, including a determination of any  
14 question of construction or validity arising under the instrument or contract. The  
15 person ~~He or she~~ may ask for a declaration of rights or duties, either alone or with  
16 other relief; and the court may make a binding declaration of these rights or duties,  
17 whether or not further relief is or could be claimed at the time. The declaration  
18 may be either affirmative or negative in form and effect, and the declaration shall  
19 have the force of a final judgment. The declaration may be had before there has  
20 been any breach of the obligation in respect to which said declaration is sought.

21 **Comment.** Section 1060 is amended to reflect the elimination of the justice court. Cal. Const.  
22 art VI, § 5(b). Section 1060 is also amended to make other technical changes.

23 **Code Civ. Proc. § 1068 (amended). Courts authorized to grant writ of review**

24 SEC. \_\_. Section 1068 of the Code of Civil Procedure is amended to read:

25 1068. (a) A writ of review may be granted by any court, except a municipal ~~or~~  
26 ~~justice~~ court, when an inferior tribunal, board, or officer, exercising judicial  
27 functions, has exceeded the jurisdiction of ~~such~~ the tribunal, board, or officer, and  
28 there is no appeal, nor, in the judgment of the court, any plain, speedy, and  
29 adequate remedy.

30 (b) The appellate division of the superior court may grant a writ of review  
31 directed to the superior court in causes within the appellate jurisdiction of the  
32 appellate division of the superior court.

33 **Comment.** Section 1068 is amended to reflect the elimination of the justice court, and the  
34 authority of the municipal and superior courts in each county to unify their operations in the  
35 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. For guidance on which civil causes are within  
36 the appellate jurisdiction of the appellate division of the superior court, see Section 904.5  
37 (appellate jurisdiction). See also Sections 85 (beta matters) & 86 (beta causes) & Comments.

38 **Code Civ. Proc. § 1085 (amended). Courts authorized to grant writ of mandate**

39 SEC. \_\_. Section 1085 of the Code of Civil Procedure is amended to read:

40 1085. (a) It A writ of mandate may be issued by any court, except a municipal ~~or~~  
41 ~~justice~~ court, to any inferior tribunal, corporation, board, or person, to compel the  
42 performance of an act which the law specially enjoins, as a duty resulting from an

1 office, trust, or station; or to compel the admission of a party to the use and  
2 enjoyment of a right or office to which he the party is entitled, and from which he  
3 the party is unlawfully precluded by such the inferior tribunal, corporation, board  
4 or person.

5 (b) The appellate division of the superior court may grant a writ of mandate  
6 directed to the superior court in causes within the appellate jurisdiction of the  
7 appellate division of the superior court.

8 **Comment.** Section 1085 is amended to reflect the elimination of the justice court, and the  
9 authority of the municipal and superior courts in each county to unify their operations in the  
10 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. For guidance on which civil causes are within  
11 the appellate jurisdiction of the appellate division of the superior court, see Section 904.5  
12 (appellate jurisdiction). See also Sections 85 (beta matters) & 86 (beta causes) & Comments.

13 Section 1085 is also amended to make technical changes.

14 ☞ **Staff Note.** The amendment of Section 1085 proposed here does not take into account the  
15 changes proposed in SB 209 (Kopp), the Commission's pending bill on judicial review of agency  
16 action. This is but one example of a larger problem: How to harmonize the Commission's work  
17 on trial court unification with pending legislation affecting provisions in the Commission's  
18 proposal. For now, attempting to address that problem would be premature.

19 **Code Civ. Proc. § 1103 (amended). Courts authorized to grant writ of prohibition**

20 SEC. \_\_\_. Section 1103 of the Code of Civil Procedure is amended to read:

21 1103. (a) It A writ of prohibition may be issued by any court, except municipal  
22 ~~or justice~~ courts, to an inferior tribunal or to a corporation, board, or person, in all  
23 cases where there is not a plain, speedy, and adequate remedy in the ordinary  
24 course of law. It is issued upon the verified petition of the person beneficially  
25 interested.

26 (b) The appellate division of the superior court may grant a writ of prohibition  
27 directed to the superior court in causes within the appellate jurisdiction of the  
28 appellate division of the superior court.

29 **Comment.** Section 1103 is amended to reflect the elimination of the justice court, and the  
30 authority of the municipal and superior courts in each county to unify their operations in the  
31 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. For guidance on which civil causes are within  
32 the appellate jurisdiction of the appellate division of the superior court, see Section 904.5  
33 (appellate jurisdiction). See also Sections 85 (beta matters) & 86 (beta causes) & Comments.

34 **• Code Civ. Proc. § 1134 (amended). Judgment and costs**

35 SEC. \_\_\_. Section 1134 of the Code of Civil Procedure is amended to read:

36 1134. In all courts the statement must be filed with the clerk of the court in  
37 which the judgment is to be entered, who must endorse upon it, and enter a  
38 judgment of such the court for the amount confessed with the costs ~~hereinafter set~~  
39 ~~forth~~. At the time of filing, the plaintiff shall pay as court costs which shall  
40 become a part of the judgment the following fees: in ~~superior courts~~ an alpha  
41 matter fifteen dollars (\$15) and in ~~municipal courts and justice courts~~ a beta matter  
42 ten dollars (\$10). No fee shall be collected from the defendant. No fee shall be  
43 paid by the clerk of the court in which said confession of judgment is filed for the

1 law library fund nor for services of any court reporter. The statement and affidavit,  
2 with the judgment endorsed ~~thereon~~ on it, becomes the judgment roll.

3 **Comment.** Section 1134 is amended to reflect the elimination of the justice court, and the  
4 authority of the municipal and superior courts in each county to unify their operations in the  
5 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. For guidance on what constitutes an alpha  
6 matter and what constitutes a beta matter, see Sections 83 (alpha matters) & 85 (beta matters) &  
7 Comments. See also Sections 82 (alpha causes) & 86 (beta causes) & Comments.

8 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
9 matters and beta matters, see Memorandum 97-38.

10 **Code Civ. Proc. § 1141.11 (technical amendment). Arbitration of at-issue civil actions**

11 SEC. \_\_. Section 1141.11 of the Code of Civil Procedure is amended to read:

12 1141.1. (a) In each superior court with 10 or more judges, all at-issue civil  
13 actions pending on or filed after the operative date of this chapter shall be  
14 submitted to arbitration, by the presiding judge or the judge designated, under this  
15 chapter if the amount in controversy in the opinion of the court will not exceed  
16 fifty thousand dollars (\$50,000) for each plaintiff, which decision shall not be  
17 appealable.

18 (b) In each superior court with less than 10 judges, the court may provide by  
19 local rule, when it determines that it is in the best interests of justice, that all at-  
20 issue civil actions pending on or filed after the operative date of this chapter, shall  
21 be submitted to arbitration by the presiding judge or the judge designated under  
22 this chapter if the amount in controversy in the opinion of the court will not exceed  
23 fifty thousand dollars (\$50,000) for each plaintiff, which decision shall not be  
24 appealable.

25 (c) In each municipal court district, the municipal court district may provide by  
26 local rule, when it is determined to be in the best interests of justice, that all at-  
27 issue civil actions pending on or filed after the operative date of this chapter in  
28 such the judicial district, shall be submitted to arbitration by the presiding judge or  
29 the judge designated under this chapter. This section does not apply to any action  
30 in the small claims ~~court~~ division, or to any action maintained pursuant to Section  
31 1781 of the Civil Code or Section 1161 of this code.

32 (d) In each municipal court district which has adopted judicial arbitration  
33 pursuant to subdivision (c), all civil actions pending on or after July 1, 1990,  
34 which involve a claim for money damages against a single defendant as a result of  
35 a motor vehicle collision, except those heard in the small claims division, shall be  
36 submitted to arbitration within 120 days of the filing of the defendant's answer to  
37 the complaint (except as may be extended by the court for good cause) before an  
38 arbitrator selected by the court, subject to disqualification for cause as specified in  
39 Sections 170.1 and 170.6.

40 The court may provide by local rule for the voluntary or mandatory use of case  
41 questionnaires, established under Section 93, in any proceeding subject to these  
42 provisions. Where local rules provide for the use of case questionnaires, the

1 questionnaires shall be exchanged by the parties upon the defendant's answer and  
2 completed and returned within 60 days.

3 For the purposes of this subdivision, the term "single defendant" means (1) an  
4 individual defendant, whether a person or an entity, (2) two or more persons  
5 covered by the same insurance policy applicable to the motor vehicle collision, or  
6 (3) two or more persons residing in the same household when no insurance policy  
7 exists that is applicable to the motor vehicle collision. The naming of one or more  
8 cross-defendants, not a plaintiff, shall constitute a multiple-defendant case not  
9 subject to the provisions of this subdivision.

10 ~~(e) The provisions of this chapter shall not apply to those actions filed in a~~  
11 ~~superior or municipal court which has been selected pursuant to Section 1823.1~~  
12 ~~and is participating in a pilot project pursuant to Title 1 (commencing with Section~~  
13 ~~1823) of Part 3.5; provided, however, that any superior or municipal court may~~  
14 ~~provide by local rule that the provisions of this chapter shall apply to actions~~  
15 ~~pending on or filed after July 1, 1979. Any action filed in such court after the~~  
16 ~~conclusion of the pilot project shall be subject to the provisions of this chapter.~~

17 ~~(f) (e)~~ No local rule of a superior court providing for judicial arbitration may  
18 dispense with the conference required pursuant to Section 1141.16.

19 **Comment.** Section 1141.11 is amended to make technical changes, including correction of the  
20 reference to the small claims court, which is colloquially acceptable but technically incorrect. See  
21 Section 116.210 & Comment. Subdivision (e) is deleted as obsolete.

22  **Staff Note.** The amendment would delete subdivision (e), because it refers to a pilot project  
23 that no longer exists. See former Sections 1823-1826.14.

#### 24 **Code Civ. Proc. § 1141.12 (technical amendment). Arbitration**

25 SEC. \_\_. Section 1141.12 of the Code of Civil Procedure is amended to read:

26 1141.12. (a) In each superior court in which arbitration may be had pursuant to  
27 subdivision (a) or (b) of Section 1141.11, upon stipulation of the parties, any at-  
28 issue civil actions shall be submitted to arbitration regardless of the amount in  
29 controversy.

30 (b) In all other superior, ~~municipal, and justice~~ and municipal courts, the Judicial  
31 Council shall provide by rule for a uniform system of arbitration of the following  
32 causes:

33 (i) Any cause upon stipulation of the parties, and

34 (ii) Upon filing of an election by the plaintiff, any cause in which the plaintiff  
35 agrees that the arbitration award shall not exceed the amount in controversy as  
36 specified in Section 1141.11.

37 (c) Any election by a plaintiff shall be filed no sooner than the filing of the at-  
38 issue memorandum, and no later than 90 days before trial, or at a later time if  
39 permitted by the court.

40 **Comment.** Section 1141.12 is amended to reflect the elimination of the justice court. Cal.  
41 Const. art VI, § 5(b).

1 • **Code Civ. Proc. § 1161.2 (amended). Case court records**

2 SEC. \_\_. Section 1161.2 of the Code of Civil Procedure is amended to read:

3 1161.2. (a) Except as provided in subdivision (g), in any case filed under this  
4 chapter ~~as a beta matter in municipal court~~, the court clerk shall not allow access to  
5 the court file, index, register of actions, or other court records until 60 days  
6 following the date the complaint is filed, except pursuant to an ex parte court order  
7 upon a showing of good cause ~~therefor~~ by any person including, but not limited to,  
8 a newspaper publisher. However, the clerk of the court shall allow access to the  
9 court file to a party in the action, an attorney of a party in the action, or any other  
10 person who (1) provides to the clerk the names of at least one plaintiff, one  
11 defendant, and the address, including the apartment, unit, or space number, if  
12 applicable, of the subject premises, or (2) provides to the clerk the name of one of  
13 the parties or the case number and can establish through proper identification that  
14 ~~he or she~~ the person resides at the subject premises.

15 (b) For purposes of this section “good cause” includes, but is not limited to, the  
16 gathering of newsworthy facts by a person described in Section 1070 of the  
17 Evidence Code. It is the intent of the Legislature that a simple procedure be  
18 established to request the ex parte order described in subdivision (a).

19 (c) Except as provided in subdivision (g), upon the filing of any case so  
20 restricted, the court clerk shall mail notice to each defendant named in the action.  
21 The notice shall be mailed to the address provided in the complaint. The notice  
22 shall contain a statement that an unlawful detainer complaint (eviction action) has  
23 been filed naming that party as a defendant, and that access to the court file will be  
24 delayed for 60 days except to a party, an attorney for one of the parties, or any  
25 other person who (1) provides to the clerk the names of at least one plaintiff and  
26 one defendant in the action and provides to the clerk the address, including any  
27 applicable apartment, unit, or space number, of the subject premises, or (2)  
28 provides to the clerk the name of one of the parties in the action or the case  
29 number and can establish through proper identification that ~~he or she~~ the person  
30 lives at the subject premises. The notice shall also contain a statement that access  
31 to the court index, register of actions, or other records is not permitted until 60  
32 days after the complaint is filed, except pursuant to an ex parte order upon a  
33 showing of good cause ~~therefor~~. The notice shall contain on its face the name and  
34 phone number of the county bar association and the name and phone number of an  
35 office funded by the federal Legal Services Corporation which provides legal  
36 services to low-income persons in the county in which the action is filed. The  
37 notice shall state that these numbers may be called for legal advice regarding the  
38 case. The notice shall be issued between 24 and 48 hours of the filing of the  
39 complaint, excluding weekends and holidays. One copy of the notice shall be  
40 addressed to “all occupants” and mailed separately to the subject premises. The  
41 notice shall not constitute service of the summons and complaint.

42 (d) Notwithstanding any other provision of law, the court shall, upon adoption of  
43 a resolution by the board of supervisors requiring such a fee, charge an additional

1 fee for filing a first appearance by the plaintiff in an amount equal in the aggregate  
2 to the actual cost of complying with this section, but which shall not exceed a  
3 maximum of four dollars (\$4). This fee shall be included as part of the total filing  
4 fee for actions filed under this chapter. Any such board resolution in effect on  
5 January 1, 1994, shall remain in effect until it is repealed.

6 (e) A municipal court or a unified superior court, after consultation with local  
7 associations of rental property owners, tenant groups, and providers of legal  
8 services to tenants, may exempt itself from the operation of this section upon a  
9 finding that unscrupulous eviction defense services are not a substantial problem  
10 in the judicial district in which the municipal court is located or the county in  
11 which the unified superior court is located. The court shall review the finding  
12 every 12 months. An exempt court shall not charge the additional fee authorized in  
13 subdivision (d).

14 (f) The Judicial Council shall examine the extent to which requests for access to  
15 files pursuant to an ex parte order under subdivision (a) are granted or denied, and  
16 if denied, the reason for the denial of access.

17 (g) This section shall not apply to a case which seeks to terminate a mobilehome  
18 park tenancy if the statement of the character of the proceeding in the caption of  
19 the complaint clearly indicates that the complaint seeks termination of a  
20 mobilehome park tenancy.

21 **Comment.** Section 1161.2 is amended to reflect the elimination of the justice court, and the  
22 authority of the municipal and superior courts in each county to unify their operations in the  
23 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. Formerly, subdivision (a) referred to an  
24 unlawful detainer case filed in a municipal court. As amended, subdivision (a) continues the same  
25 policy: The definition of a beta matter is equivalent to the requirements under former law for a  
26 matter within the jurisdiction of the municipal court. See Sections 85 (beta matters), 86 (beta  
27 causes).

28 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
29 matters and beta matters, see Memorandum 97-38.

30 • **Code Civ. Proc. § 1710.20 (amended). Filing of application**

31 SEC. \_\_. Section 1710.20 of the Code of Civil Procedure is amended to read:

32 1710.20. (a) An application in which the sister state judgment amounts to  
33 twenty-five thousand dollars (\$25,000) or less is a beta cause. The application  
34 shall be filed in a municipal or justice court in all cases in which the sister state  
35 judgment amounts to twenty-five thousand dollars (\$25,000) or less court or a  
36 unified superior court in a beta matter, and in a superior court in all other cases.

37 (b) Subject to the power of the court to transfer proceedings under this chapter  
38 pursuant to Title 4 (commencing with Section 392) of Part 2, the proper county for  
39 the filing of an application is any of the following:

40 (1) The county in which any judgment debtor resides; or

41 (2) If no judgment debtor is a resident, any county in this state.

42 **Comment.** Section 1710.20 is amended to reflect the elimination of the justice court, and the  
43 authority of the municipal and superior courts in each county to unify their operations in the  
44 superior court. Cal. Const. art. VI, §§ 5(b), (e), 10. For examples of other provisions classifying

1 causes as beta causes, see Section 86 (beta causes) & Comment. If every cause in a matter is a  
2 beta cause and the amount in controversy is \$25,000 or less, the matter is a beta matter. See  
3 Section 85 (beta matters) & Comment.

4 ☞ **Staff Note.** On distinguishing between alpha causes and beta causes, and between alpha  
5 matters and beta matters, see Memorandum 97-38.

6 **Code Civ. Proc. § 1775.1 (technical amendment). Definitions**

7 SEC. \_\_\_. Section 1775.1 of the Code of Civil Procedure is amended to read:

8 1775.1. (a) As used in this title:

9 (1) “Court” means a superior court, ~~municipal court, or justice court.~~ or  
10 municipal court.

11 (2) “Mediation” means a process in which a neutral person or persons facilitate  
12 communication between the disputants to assist them in reaching a mutually  
13 acceptable agreement.

14 (b) Unless otherwise specified in this title or ordered by the court, any act to be  
15 performed by a party may also be performed by ~~his or her~~ the party’s counsel of  
16 record.

17 **Comment.** Section 1775.1 is amended to reflect the elimination of the justice court. Cal. Const.  
18 art VI, § 5(b). Section 1775.1 is also amended to make another technical change.

19 **Code Civ. Proc. § 1995 (technical amendment). Prisoner as witness**

20 SEC. \_\_\_. Section 1995 of the Code of Civil Procedure is amended to read:

21 1995. If the witness be a prisoner, confined in a jail within this state, an order for  
22 ~~his examination of the prisoner~~ in the jail upon deposition, or for his temporary  
23 removal and production of the prisoner before a court or officer may be made as  
24 follows:

25 1. By the court itself in which the action or special proceeding is pending, unless  
26 ~~it be a small claims court~~ is a small claims division .

27 2. By a justice of the Supreme Court, or a judge of the superior court of the  
28 county where the action or proceeding is pending, if pending before a small claims  
29 ~~court~~ division, or before a judge or other person out of court.

30 **Comment.** Section 1995 is amended to make technical changes, including correction of the  
31 reference to the small claims court, which is colloquially acceptable but technically incorrect. See  
32 Section 116.210 & Comment.

33 **Code Civ. Proc. § 2015.3 (technical amendment). Certificate of sheriff, marshal, or court**  
34 **clerk**

35 SEC. \_\_\_. Section 2015.3 of the Code of Civil Procedure is amended to read:

36 2015.3. The certificate of a sheriff, marshal, or the clerk of the ~~superior,~~  
37 ~~municipal, or justice~~ superior or municipal court, has the same force and effect as  
38 ~~his or her~~ that person’s affidavit.

39 **Comment.** Section 2015.3 is amended to reflect the elimination of the justice court. Cal. Const.  
40 art VI, § 5(b). Section 2015.3 is also amended to make another technical change.